

REFERENCE TITLE: **procurement; construction; specialized services**

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1377

Introduced by
Senator Huppenthal

AN ACT

AMENDING SECTIONS 28-7361, 28-7363, 28-7364, 28-7365, 28-7366, 34-101, 34-102, 34-103, 34-602 AND 34-603, ARIZONA REVISED STATUTES; RENUMBERING SECTIONS 34-604, 34-605, 34-606, 34-607, 34-608, 34-609, 34-610 AND 34-611, ARIZONA REVISED STATUTES, AS SECTIONS 34-606, 34-607, 34-608, 34-609, 34-610, 34-611, 34-612 AND 34-613, RESPECTIVELY; AMENDING TITLE 34, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 34-604 AND 34-605; AMENDING SECTIONS 34-608, 38-610 AND 34-611, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 41-2503, 41-2532, 41-2533, 41-2534, 41-2537, 41-2573, 41-2574 AND 41-2578, ARIZONA REVISED STATUTES; RENUMBERING SECTIONS 41-2579 AND 41-2580, ARIZONA REVISED STATUTES, AS SECTIONS 41-2582 AND 41-2583, RESPECTIVELY; AMENDING TITLE 41, CHAPTER 23, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 41-2579 AND 41-2580 AND SECTION 41-2581; AMENDING SECTION 41-2582, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTION 41-2616, ARIZONA REVISED STATUTES; RELATING TO THE PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-7361, Arizona Revised Statutes, is amended to
3 read:

4 28-7361. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Architect services" means those professional architect services
7 that are within the scope of architectural practice as provided in title 32,
8 chapter 1.

9 2. "Construction-manager-at-risk" means a project delivery method in
10 which:

11 (a) There is a contract for construction services that is separate
12 from the contract for design services.

13 (b) Design services are performed under a separate design services
14 contract, except that as to bridges and other transportation facilities the
15 department may perform with its own employees or force account preliminary
16 design and either:

17 (i) In the case of bridges only, all design services up to final
18 design.

19 (ii) In the case of other transportation facilities, up to twenty per
20 cent of the design work.

21 (c) The contract for construction services may be entered into at the
22 same time as the design services are commenced or at a later time.

23 (d) Design and construction of the project may be in sequential phases
24 or concurrent phases.

25 (e) Finance services, maintenance services, operations services,
26 preconstruction services and other related services may be included.

27 3. "Construction services" means either of the following for
28 construction-manager-at-risk, ONE-STEP DESIGN-BUILD and job-order-contracting
29 project delivery methods:

30 (a) Construction, excluding services, through the
31 construction-manager-at-risk, ONE-STEP DESIGN-BUILD or job-order-contracting
32 project delivery methods.

33 (b) A combination of construction and, as elected by the department,
34 one or more related services, such as finance services, maintenance services,
35 operations services, design services and preconstruction services, as those
36 services are authorized in the definition of construction-manager-at-risk,
37 ONE-STEP DESIGN-BUILD or job-order-contracting.

38 4. "Contract" means all types of department agreements, regardless of
39 what they are called, for procurements pursuant to this article.

40 5. "Contractor" means any person who has a contract with the
41 department.

42 ~~6. "Design-build" means the process of entering into and managing a~~
43 ~~contract between the department and another party in which the other party~~
44 ~~agrees to both design and build a highway, a structure, a facility or other~~
45 ~~items specified in the contract.~~

1 ~~7. "Design builder" means any individual, partnership, joint venture,~~
2 ~~corporation or other legal entity that is appropriately licensed in this~~
3 ~~state and that furnishes the necessary design services, in addition to~~
4 ~~construction of the work, whether by itself or through subcontracts,~~
5 ~~including subcontracts for architectural and engineering services.~~

6 ~~8.~~ 6. "Design services" means architect services, engineer services
7 or landscape architect services.

8 ~~9.~~ 7. "Emergency" means an immediate threat to public health, welfare
9 or safety caused by flood, earthquake, hurricane, tornado, explosion, fire or
10 other catastrophe such that compliance with normal bidding procedures for
11 repair or reconstruction of transportation facilities would be impracticable
12 or contrary to the public interest.

13 ~~10.~~ 8. "Engineer services" means those professional engineer services
14 that are within the scope of engineering practice as provided in title 32,
15 chapter 1.

16 ~~11.~~ 9. "Finance services" means financing for a construction services
17 project.

18 ~~12.~~ 10. "Job-order-contracting" means a project delivery method in
19 which:

20 (a) The contract is for indefinite quantities of construction and, at
21 the election of the department, may or may not include a guaranteed minimum
22 amount of work.

23 (b) The construction to be performed is specified in job orders issued
24 during the contract.

25 (c) Finance services, maintenance services, operations services,
26 preconstruction services, design services and other related services may be
27 included.

28 ~~13.~~ 11. "Landscape architect services" means those professional
29 landscape architect services that are within the scope of landscape
30 architectural practice as provided in title 32, chapter 1.

31 ~~14.~~ 12. "Maintenance services" means routine maintenance, repair and
32 replacement of existing facilities, structures, buildings or real property.

33 13. "ONE-STEP DESIGN-BUILD" MEANS A PROJECT DELIVERY METHOD IN WHICH:
34 (a) THERE IS A SINGLE CONTRACT FOR DESIGN SERVICES AND CONSTRUCTION
35 SERVICES.

36 (b) DESIGN AND CONSTRUCTION OF THE PROJECT MAY BE IN SEQUENTIAL PHASES
37 OR CONCURRENT PHASES.

38 (c) FINANCE SERVICES, MAINTENANCE SERVICES, OPERATIONS SERVICES,
39 PRECONSTRUCTION SERVICES AND OTHER RELATED SERVICES MAY BE INCLUDED.

40 ~~15.~~ 14. "Operations services" means routine operation of existing
41 facilities, structures, buildings or real property.

42 ~~16.~~ 15. "Person" means any corporation, business, individual, union,
43 committee, club, other organization or group of individuals.

44 ~~17.~~ 16. "Preconstruction services" means advice during the design
45 phase.

1 ~~18.~~ 17. "Specific single project" means a project that is constructed
2 at a single location, at a common location or for a common purpose.

3 ~~19.~~ 18. "Subcontractor" means a person who contracts to perform work
4 or render service to a contractor or to another subcontractor as a part of a
5 contract with the department.

6 19. "TWO-STEP DESIGN-BUILD" MEANS THE PROCESS OF ENTERING INTO AND
7 MANAGING A CONTRACT BETWEEN THE DEPARTMENT AND ANOTHER PARTY IN WHICH THE
8 OTHER PARTY AGREES TO BOTH DESIGN AND BUILD A HIGHWAY, A STRUCTURE, A
9 FACILITY OR OTHER ITEMS SPECIFIED IN THE CONTRACT.

10 20. "TWO-STEP DESIGN-BUILDER" MEANS ANY INDIVIDUAL, PARTNERSHIP, JOINT
11 VENTURE, CORPORATION OR OTHER LEGAL ENTITY THAT IS APPROPRIATELY LICENSED IN
12 THIS STATE AND THAT FURNISHES THE NECESSARY DESIGN SERVICES, IN ADDITION TO
13 CONSTRUCTION OF THE WORK, WHETHER BY ITSELF OR THROUGH SUBCONTRACTS,
14 INCLUDING SUBCONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES.

15 Sec. 2. Section 28-7363, Arizona Revised Statutes, is amended to read:

16 ~~28-7363.~~ Two-step design-build method of project delivery

17 A. Notwithstanding any other law, the department may use the TWO-STEP
18 design-build method of project delivery on a project if the department makes
19 a determination in writing that it is appropriate and in the best interests
20 of the department to use the TWO-STEP design-build method of project delivery
21 for that project, except that:

22 1. The department shall not enter into a contract to operate any
23 structure, facility or other item pursuant to this article.

24 2. Each TWO-STEP design-build project shall be a specific single
25 project.

26 3. The department shall not commence any TWO-STEP design-build project
27 after December 31, 2025. For the purposes of this paragraph, a project is
28 commenced on the date the department solicits the contract for the project.
29 If the department solicits a TWO-STEP design-build contract on or before
30 December 31, 2025, the contract may be executed and services and construction
31 under the contract may be rendered in whole or in part after December 31,
32 2025.

33 B. The estimated cost of the project shall not include the cost to
34 procure any right-of-way or other cost of condemnation. The cost to procure
35 any right-of-way or other cost of condemnation remains at all times the
36 responsibility of the department. The department shall obtain all necessary
37 rights-of-way.

38 C. The department is responsible for preparation and acquisition of
39 all environmental documents, including the scope of any remediation and
40 required clearances.

41 D. If construction of a TWO-STEP design-build project involves
42 railroad facilities, the railroad shall approve the use of the TWO-STEP
43 design-build delivery method before the department awards the TWO-STEP
44 design-build contract.

1 E. To ensure fair, uniform, clear and effective procedures that will
2 deliver a quality project on time and within budget, the director, in
3 conjunction with the appropriate and affected professionals and contractors,
4 may adopt procedures for procuring a project using the **TWO-STEP** design-build
5 method of project delivery.

6 F. The provisions of sections 28-6923 and 28-6924 relating to bid,
7 performance and payment bonds and to change orders, progress payments,
8 contract retentions, definitions and authority to award contracts apply to
9 department **TWO-STEP** design-build projects for transportation facilities
10 pursuant to this article.

11 Sec. 3. Section 28-7364, Arizona Revised Statutes, is amended to read:
12 **28-7364. Two-step design-build criteria**

13 The department shall use the following criteria as the minimum basis
14 for determining when to use the **TWO-STEP** design-build method of project
15 delivery:

16 1. The extent to which it can adequately define the project
17 requirements.

18 2. The time constraints for delivery of the project.

19 3. The capability and experience of potential teams with the **TWO-STEP**
20 design-build method of project delivery.

21 4. The suitability of the project for use of the **TWO-STEP** design-build
22 method of project delivery in the areas of time, schedule, costs and quality.

23 5. The capability of the department to manage the project, including
24 the employment of experienced personnel or outside consultants.

25 6. The capability of the department to oversee the project with
26 persons who are familiar with the **TWO-STEP** design-build method of project
27 delivery.

28 7. Other criteria the department deems relevant.

29 Sec. 4. Section 28-7365, Arizona Revised Statutes, is amended to read:
30 **28-7365. Two-step design-build; two-phase solicitation**

31 A. If the department determines that the **TWO-STEP** design-build method
32 of project delivery is appropriate, the department shall establish a
33 two-phase procedure for awarding the **TWO-STEP** design-build contract. The
34 department shall limit each solicitation for a **TWO-STEP** design-build contract
35 to a specific single project.

36 B. During phase one, and before solicitation, the director shall
37 appoint a selection team of at least three persons. At least one-half of the
38 selection team shall be architects or engineers who are registered pursuant
39 to section 32-121. The selection team members may be either department
40 employees or outside consultants. The selection team shall also include at
41 least one person who is a senior management employee of a licensed contractor
42 who is not involved in the project. Any architect or engineer who is serving
43 on the selection team and who is not a department employee shall not be
44 otherwise involved in the project. The department shall prepare documents
45 for a request for qualifications.

- 1 C. The request for qualifications shall include all of the following:
2 1. The minimum qualifications of the **TWO-STEP** design-builder.
3 2. A scope of work statement and schedule.
4 3. Documents defining the project requirements.
5 4. The form of contract to be awarded.
6 5. The selection criteria for compiling a short list and the number of
7 firms to be included on the short list. At least three but not more than
8 five firms shall be included on the short list.
9 6. A description of the phase two requirements and subsequent
10 management needed to bring the project to completion.
11 7. The maximum time allowable for design and construction.
12 8. The department's estimated cost of design and construction.
13 D. The selection team shall evaluate the **TWO-STEP** design-build
14 qualifications of responding firms and shall compile a short list of firms in
15 accordance with technical and qualifications-based criteria. The number of
16 firms on the short list shall be the number of firms specified in the request
17 for qualifications, except that, if a smaller number of firms responds to the
18 solicitation or if one or more of the firms on the short list drop out so
19 that only two firms remain on the short list, the selection team may proceed
20 with the selection process with the remaining firms if at least two firms
21 remain or the selection team may readvertise as the selection team deems
22 necessary.
23 E. During phase two, the department shall issue a request for
24 proposals to the **TWO-STEP** design-builders on the short list. The request
25 shall include:
26 1. The scope of work, including programmatic, performance and
27 technical requirements, conceptual design, specifications and functional and
28 operational elements for the delivery of the completed project, which shall
29 all be prepared by an architect or engineer, as appropriate, who is
30 registered pursuant to section 32-121.
31 2. A description of the qualifications required of the **TWO-STEP**
32 design-builder and the selection criteria, including the weight or relative
33 order, or both, of each criterion.
34 3. Copies of the contract documents that the successful proposer will
35 be expected to sign.
36 4. The maximum time allowable for design and construction.
37 5. The department's estimated cost of design and construction.
38 6. The requirement that a proposal be segmented into two parts, a
39 technical proposal and a price proposal. Each proposal shall be in a
40 separately sealed, clearly identified package and shall include the date and
41 time of the submittal deadline. The technical proposal shall include a
42 schedule, schematic design plans and specifications, technical reports,
43 calculations, permit requirements, applicable development fees and other data
44 requested in the request for proposals. The price proposal shall contain all

1 design, construction, engineering, inspection and construction costs of the
2 proposed project.

3 7. The date, time and location of the public opening of the sealed
4 price proposals.

5 8. Other information relevant to the project.

6 F. If stated in the request for proposals, in order to inform each
7 firm whether the firm's concept is responsive to the request for proposals,
8 the department may enter into a separate confidential discussion with each
9 firm on the short list to discuss alternative technical concepts that the
10 firm may propose.

11 G. The department shall proceed as follows:

12 1. The selection team shall review the technical proposals and score
13 the technical proposals using the selection criteria in the request for
14 proposals. The technical review team shall then submit a technical proposal
15 score for each TWO-STEP design-builder to the department. The technical
16 review team shall reject any proposal it deems to be nonresponsive.

17 2. The department shall announce the technical proposal score for each
18 TWO-STEP design-builder, shall publicly open the sealed price proposals and
19 shall divide each TWO-STEP design-builder's price by the score that the
20 selection team has given to it to obtain an adjusted score. The TWO-STEP
21 design-builder selected shall be that responsive and responsible
22 design-builder whose adjusted score is the lowest.

23 3. If a time factor is included with the selection criteria in the
24 request for proposals package, the department may also adjust the bids using
25 a value of the time factor established by the department. The value of the
26 time factor shall be a value per day. The adjustment shall be based on the
27 total time value. The total time value is the TWO-STEP design-builder's
28 proposed number of days to complete the project multiplied by the factor.
29 The time adjusted price is the total time value plus the bid amount. This
30 adjustment shall be used for selection purposes only and shall not affect the
31 department's liquidated damages schedule or incentive and disincentive
32 program. An adjusted score shall then be obtained by dividing each TWO-STEP
33 design-builder's time adjusted price by the score given by the technical
34 review team. The department shall select the responsive and responsible
35 TWO-STEP design-builder whose adjusted score is the lowest.

36 4. Unless all proposals are rejected, the board shall award the
37 contract to the responsive and responsible TWO-STEP design-builder with the
38 lowest adjusted score. The board reserves the right to reject all proposals.

39 5. The department shall award a stipulated fee equal to two-tenths of
40 one per cent of the department's estimated cost of design and construction to
41 each short list responsible proposer who provides a responsive, but
42 unsuccessful proposal. If the department does not award a contract, all
43 responsive proposers shall receive the stipulated fee. If the department
44 cancels the contract before reviewing the technical proposals, the department
45 shall award each TWO-STEP design-builder on the selected short list a

1 stipulated fee equal to two-tenths of one per cent of the department's
2 estimated cost of design and construction. The department shall pay the
3 stipulated fee to each proposer within ninety days after the award of the
4 contract or the decision not to award a contract. In consideration for
5 paying the stipulated fee, the department may use any ideas or information
6 contained in the proposals in connection with any contract awarded for the
7 project, or in connection with a subsequent procurement, without any
8 obligation to pay any additional compensation to the unsuccessful proposers.
9 Notwithstanding the other provisions of this paragraph, an unsuccessful short
10 list proposer may elect to waive the stipulated fee. If an unsuccessful
11 short list proposer elects to waive the stipulated fee, the department may
12 not use ideas and information contained in the proposer's proposal, except
13 that this restriction does not prevent the department from using any idea or
14 information if the idea or information is also included in a proposal of a
15 short list proposer that accepts the stipulated fee.

16 Sec. 5. Section 28-7366, Arizona Revised Statutes, is amended to read:
17 28-7366. Construction-manager-at-risk construction services,
18 one-step design-build construction services and
19 job-order-contracting construction services

20 A. The department may procure the following services pursuant to this
21 section:

- 22 1. Construction-manager-at-risk construction services.
- 23 2. Job-order-contracting construction services.
- 24 3. **ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES.**

25 B. The department shall provide notice of each procurement of
26 construction services prescribed in this section and shall award contracts on
27 the basis of demonstrated competence and qualifications for the type of
28 construction services pursuant to the procedures prescribed in this section.

29 C. In the procurement of construction services pursuant to this
30 section:

31 1. The department shall issue a request for qualifications for each
32 contract and publish notice of the request for qualifications in the same
33 manner as provided in section 28-6923. The request for qualifications shall:

34 (a) Include the number of persons or firms to be included on the final
35 list. At least three but not more than five persons or firms shall be on the
36 final list.

37 (b) State the criteria to be used by the selection team to select the
38 person or firm to perform the construction services. The request for
39 qualifications shall also state in a manner determined by the department the
40 relative weight of the selection criteria.

41 (c) If the department will hold interviews as part of the selection
42 process, state that interviews shall be held with at least the number of
43 persons or firms to be included in the final list but not more than the
44 number of persons or firms to be included in the final list plus two.

1 2. For each request for qualifications, the department shall initiate
2 a selection team pursuant to section 28-7365, subsection B. A person who is
3 a member of a selection team shall not be a contractor under the contract or
4 provide construction, construction services, materials or services under the
5 contract. The selection team shall:

6 (a) Evaluate the statements of qualifications and performance data
7 that are submitted in response to the department's request for
8 qualifications.

9 (b) If determined by the department and included by the department in
10 the request for qualifications, conduct interviews with the number of persons
11 or firms to be interviewed as stated in the request for qualifications
12 regarding the contract and the relative methods of approach for furnishing
13 the required construction services.

14 (c) After any interviews, in order of preference, based on the
15 criteria and the weighting of criteria established and published by the
16 department and included in the request for qualifications, select a final
17 list for the contract of persons or firms the selection team deems to be the
18 most qualified to provide the construction services and, in the case of a
19 contract that will be negotiated under subsection E of this section, rank the
20 persons or firms on the final list in order of preference. The selection
21 team shall base the selection of the final list and the order of preference
22 on demonstrated competence and qualifications only. The number of persons or
23 firms on the final list shall be the number of persons or firms specified in
24 the request for qualifications, except that:

25 (i) If a smaller number of responsive and responsible persons or firms
26 respond to the solicitation, the department may have the selection team
27 proceed with the selection process, including interviews and the final list,
28 with the remaining persons or firms if at least two persons or firms remain
29 or the department may readvertise pursuant to this subsection as the
30 department deems necessary or appropriate.

31 (ii) If only one responsive and responsible person or firm responds to
32 a solicitation for a contract to be negotiated pursuant to subsection E of
33 this section, the department may proceed with only one person or firm in the
34 selection process and may award the contract to a single person or firm if
35 the department determines in writing that the fee negotiated pursuant to
36 subsection E of this section is fair and reasonable and that either other
37 prospective persons or firms had reasonable opportunity to respond or there
38 is not adequate time for a resolicitation.

39 (iii) If a person or firm on the final list withdraws or is removed
40 from the selection process and the selection team determines that it is in
41 the best interest of the department, the selection team may replace that
42 person or firm with the person or firm that submitted qualifications and that
43 is selected by the selection team as the next most qualified.

44 (d) Base the selection of the final list and order of preference on
45 the final list on demonstrated competence and qualifications only.

1 3. The department and the selection team shall not request or consider
2 fees, price, man-hours or any other cost information at any point in the
3 selection process under this subsection or subsection D of this section,
4 including the selection of the persons or firms to be interviewed, the
5 selection of the persons or firms to be on the final list, in determining the
6 order of preference of persons or firms on the final list or for any other
7 purpose in the selection process.

8 4. For construction-manager-at-risk construction services, the
9 contract under a request for qualifications solicitation is limited to a
10 specific single project.

11 D. The department shall award a contract for construction services AND
12 ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES to one of the persons or firms on
13 the final list prepared pursuant to subsection C of this section as provided
14 in subsection E or F of this section, except that, if fewer than the number
15 of persons or firms on the final list respond to the request for proposals
16 pursuant to subsection F of this section but at least two persons or firms on
17 the final list submit responsive proposals, or if one or more of the persons
18 or firms on the final list drop out of the selection process pursuant to
19 subsection E or F of this section:

20 1. If there are three or more remaining persons or firms, the
21 department shall proceed with the selection process.

22 2. If there are only two remaining persons or firms, as the department
23 deems necessary and appropriate, the department may proceed with the
24 selection process with the two persons or firms or may terminate the
25 selection process and may readvertise pursuant to subsection C of this
26 section.

27 3. If there is only one remaining person or firm, the department may
28 award the contract to a single person or firm if the department determines in
29 writing that the fee negotiated pursuant to subsection E of this section is
30 fair and reasonable and that either other prospective persons or firms had
31 reasonable opportunity to respond or there is not adequate time for a
32 resolicitation.

33 E. For the single contract included in the request for qualifications,
34 the department shall enter into negotiations for the contract with the
35 highest qualified person or firm on the final list for the construction
36 services. The negotiations shall include consideration of compensation and
37 other contract terms that the department determines to be fair and reasonable
38 to the department. In making this decision, the department shall take into
39 account the estimated value, the scope, the complexity and the nature of the
40 construction services to be rendered. If the department is not able to
41 negotiate a satisfactory contract with the highest qualified person or firm
42 on the final list at compensation and on other contract terms the department
43 determines to be fair and reasonable, the department shall formally terminate
44 negotiations with that person or firm. The department may undertake
45 negotiations with the next most qualified person or firm on the final list in

1 sequence until an agreement is reached or a determination is made to reject
2 all persons or firms on the final list. If a contract for construction
3 services is entered into pursuant to this subsection:

4 1. If the contract is for construction-manager-at-risk construction
5 services **OR ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES** and includes
6 preconstruction services by the contractor, the department shall enter into a
7 written contract with the contractor for preconstruction services under which
8 the department shall pay the contractor a fee for preconstruction services in
9 an amount agreed by the department and the contractor, and the department
10 shall not request or obtain a fixed price or a guaranteed maximum price for
11 the construction from the contractor or enter into a construction contract
12 with the contractor until after the department has entered into the written
13 contract for preconstruction services and a preconstruction services fee.

14 2. Construction shall not commence until the department and contractor
15 agree in writing on either a fixed price that the department will pay for the
16 construction to be commenced or a guaranteed maximum price for the
17 construction to be commenced.

18 F. As an alternative to subsection E of this section, the department
19 may award job-order-contracting construction services as follows:

20 1. The department shall use the selection team that is appointed for
21 the request for qualifications pursuant to subsection C of this section.

22 2. The department shall issue a request for proposals to the persons
23 or firms on the final list that is developed pursuant to subsection C of this
24 section.

25 3. For job-order-contracting construction services, the request for
26 proposals shall include:

27 (a) The department's project schedule and project final design and
28 construction budget or life cycle budget for a procurement that includes
29 maintenance services or operations services.

30 (b) A statement that the contract will be awarded to the offeror whose
31 proposal receives the highest number of points under a scoring method.

32 (c) A description of the scoring method, including a list of the
33 factors in the scoring method and the number of points allocated to each
34 factor.

35 (d) A requirement that each offeror separately submit a technical
36 proposal and a price proposal and that the offeror's entire proposal be
37 responsive to the requirements in the request for proposals.

38 (e) A statement that in applying the scoring method the selection team
39 will separately evaluate the technical proposal and the price proposal and
40 will evaluate and score the technical proposal before opening the price
41 proposal.

42 (f) If the department conducts discussions pursuant to paragraph 5 of
43 this subsection, a statement that discussions will be held and a requirement
44 that each offeror submit a preliminary technical proposal before the
45 discussions are held.

1 4. If the department determines to conduct discussions pursuant to
2 paragraph 5 of this subsection, each offeror shall submit a preliminary
3 technical proposal to the department before those discussions are held.

4 5. If determined by the department and included by the department in
5 the request for proposals, the selection team shall conduct discussions with
6 all ~~persons or firms~~ OFFERORS that submit preliminary technical proposals.
7 Discussions shall be for the purpose of clarification to ~~assure~~ ENSURE full
8 understanding of, and responsiveness to, the solicitation requirements. The
9 department shall accord fair treatment to offerors with respect to any
10 opportunity for discussion and for clarification by the owner. Revision of
11 preliminary technical proposals shall be permitted after submission of
12 preliminary technical proposals and before award for the purpose of obtaining
13 the best and final proposals. In conducting any discussions, information
14 derived from proposals submitted by competing offerors shall not be disclosed
15 to other competing offerors.

16 6. After completion of any discussions pursuant to paragraph 5 of this
17 subsection or if no discussions are held, each offeror shall separately
18 submit the offeror's final technical proposal and the offeror's price
19 proposal.

20 7. Before opening any price proposal, the selection team shall open
21 the final technical proposals, evaluate the final technical proposals and
22 score the final technical proposals using the scoring method in the request
23 for proposals. No other factors or criteria may be used in the evaluation
24 and scoring.

25 8. After completion of the evaluation and scoring of all final
26 technical proposals, the selection team shall open the price proposals,
27 evaluate the price proposals, score the price proposals and complete the
28 scoring of the entire proposals using the scoring method in the request for
29 proposals. No other factors or criteria may be used in the evaluation and
30 scoring.

31 9. The department shall award the contract to the responsive and
32 responsible offeror whose proposal receives the highest score under the
33 method of scoring in the request for proposals. No other factors or criteria
34 may be used in the evaluation.

35 10. The contract file shall contain the basis on which the award is
36 made.

37 G. Until an award and execution of a contract by the department, only
38 the name of each person or firm on the final list developed pursuant to
39 subsection C of this section may be made available to the public. All other
40 information received by the department in response to the request for
41 qualifications or contained in the proposals is confidential in order to
42 avoid disclosure of the contents that may be prejudicial to competing
43 offerors during the selection process. The department shall open the
44 proposals to public inspection after the contract is awarded and the
45 department has executed the contract. To the extent that the offeror

1 designates and the department concurs, trade secrets and other proprietary
2 data contained in a proposal remain confidential.

3 H. The department may cancel a request for qualifications or a request
4 for proposals or reject in whole or in part any or all proposals as specified
5 in the solicitation if it is in the best interest of the department. The
6 department shall make the reasons for cancellation or rejection part of the
7 contract file.

8 I. Notwithstanding any other law:

9 1. The contractor for job-order-contracting construction services **OR**
10 **ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES** is not required to be registered
11 to perform design services pursuant to title 32, chapter 1 if the person or
12 firm actually performing the design services on behalf of the contractor is
13 appropriately registered.

14 2. The contractor for construction-manager-at-risk **CONSTRUCTION**
15 **SERVICES, ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES** or
16 job-order-contracting construction services **ONE-STEP DESIGN-BUILD**
17 **CONSTRUCTION SERVICES** shall be licensed to perform construction pursuant to
18 title 32, chapter 10.

19 3. For each project under a construction-manager-at-risk construction
20 services contract **OR ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES CONTRACT**,
21 the licensed contractor performing the contract shall perform, with the
22 contractor's own organization, construction work that amounts to not less
23 than forty per cent of the total contract price for construction. For the
24 purposes of this paragraph, the total contract price for construction does
25 not include the cost of preconstruction services, design services or any
26 other related services or the cost to procure any right-of-way or other cost
27 of condemnation.

28 4. There shall be a separate request for qualifications under
29 subsection C of this section for each contract for
30 construction-manager-at-risk construction services, **ONE-STEP DESIGN-BUILD**
31 **CONSTRUCTION SERVICES** or job-order-contracting construction services.

32 5. The department shall not procure any construction services using
33 the construction-manager-at-risk construction services, **ONE-STEP DESIGN-BUILD**
34 **CONSTRUCTION SERVICES** or job-order-contracting construction services method
35 of project delivery after December 31, 2025. For the purposes of this
36 paragraph, the department procures construction services when the department
37 solicits the contract for construction services. If the department solicits
38 a contract for construction services on or before December 31, 2025, the
39 contract may be executed and construction services under the contract may be
40 rendered in whole or in part after December 31, 2025.

41 J. For job-order-contracting construction services only:

42 1. The maximum dollar amount of an individual job order shall be one
43 million dollars or such higher or lower amount prescribed by the department.
44 Requirements shall not be artificially divided or fragmented in order to
45 constitute a job order that satisfies this requirement.

1 2. If the contractor subcontracts or intends to subcontract any of the
2 work under a job order and if the job-order-construction services contract
3 includes descriptions of standard individual tasks, standard unit prices for
4 standard individual tasks and pricing of job orders based on the number of
5 units of standard individual tasks in the job order:

6 (a) The contractor has a duty to deliver promptly to each
7 subcontractor invited to bid a coefficient to the contractor to do all or
8 part of the work under one or more job orders:

9 (i) A copy of the descriptions of all standard individual tasks on
10 which the subcontractor is invited to bid.

11 (ii) A copy of the standard unit prices for the individual tasks on
12 which the subcontractor is invited to bid.

13 (b) If not previously delivered to the subcontractor, the contractor
14 has a duty to deliver promptly the following to each subcontractor invited to
15 or that has agreed to do any of the work included in any job order:

16 (i) A copy of the description of each standard individual task that is
17 included in the job order and that the subcontractor is invited to perform.

18 (ii) The number of units of each standard individual task that is
19 included in the job order and that the subcontractor is invited to perform.

20 (iii) The standard unit price for each standard individual task that
21 is included in the job order and that the subcontractor is invited to
22 perform.

23 K. Notwithstanding anything to the contrary in this title, the
24 department shall not enter into a contract as contractor to provide
25 construction-manager-at-risk construction services, **ONE-STEP DESIGN-BUILD**
26 **CONSTRUCTION SERVICES** or job-order-contracting construction services.

27 L. Each contract for construction-manager-at-risk construction
28 services, **ONE-STEP DESIGN-BUILD CONSTRUCTION SERVICES** or
29 job-order-contracting construction services shall contain a description of
30 each separate location at which the construction will be performed and a
31 requirement that the contractor include in each of the contractor
32 subcontracts the same location description. The contractor shall include in
33 each subcontract a description of each separate location at which the
34 construction will be performed.

35 M. Except as otherwise provided in this section, sections 28-6923 and
36 28-6924, relating to bid, performance and payment bonds, change orders,
37 progress payments, contract retention, definitions and authority to award
38 contracts, apply to department construction-manager-at-risk, **ONE-STEP**
39 **DESIGN-BUILD** and job-order-contracting contracts for transportation
40 facilities pursuant to this article.

41 Sec. 6. Section 34-101, Arizona Revised Statutes, is amended to read:

42 34-101. Definitions

43 In this title, unless the context otherwise requires:

44 1. "Agent":

1 (a) Means any county, city or town, or officer, board or commission
2 ~~thereof~~ OF ANY COUNTY, CITY OR TOWN, and irrigation, power, electrical,
3 drainage and flood control districts, tax levying public improvement
4 districts, and county or city improvement districts.

5 (b) Includes any county board of supervisors and any representative
6 authorized by an agent to act as an agent for the purpose of authorizing
7 necessary change orders to previously awarded contracts in accordance with
8 guidelines established by rule of the agent, including the board of
9 supervisors.

10 2. "Architect services" means those professional architect services
11 that are within the scope of architectural practice as provided in title 32,
12 chapter 1.

13 3. "Construction":

14 (a) Means the process of building, altering, repairing, improving or
15 demolishing any public structure or building or other public improvements of
16 any kind to any public real property.

17 (b) Does not include the routine operation, routine repair or routine
18 maintenance of existing facilities, structures, buildings or real property ~~or~~
19 ~~demolition projects costing less than two hundred thousand dollars.~~

20 4. "Construction-manager-at-risk" means a project delivery method in
21 which:

22 (a) There is a separate contract for design services and a separate
23 contract for construction services.

24 (b) The contract for construction services may be entered into at the
25 same time as the contract for design services or at a later time.

26 (c) Design and construction of the project may be in sequential phases
27 or concurrent phases.

28 (d) Finance services, maintenance services, operations services,
29 preconstruction services and other related services may be included.

30 5. "Construction services" means either of the following for
31 construction-manager-at-risk, design-build and job-order-contracting project
32 delivery methods:

33 (a) Construction, excluding services, through the
34 construction-manager-at-risk or job-order-contracting project delivery
35 methods.

36 (b) A combination of construction and, as elected by the agent, one or
37 more related services, such as finance services, maintenance services,
38 operations services, design services and preconstruction services, as those
39 services are authorized in the definitions of construction-manager-at-risk,
40 design-build or job-order-contracting in this section.

41 6. "Contract" means all types of agent agreements, regardless of what
42 they are called, for the procurement of services pursuant to this title.

43 7. "Contractor" means any person who has a contract with an agent.

44 8. "Design-bid-build" means a project delivery method in which:

- 1 (a) There is a sequential award of two separate contracts.
2 (b) The first contract is for design services.
3 (c) The second contract is for construction.
4 (d) Design and construction of the project are in sequential phases.
5 (e) Finance services, maintenance services and operations services are
6 not included.
- 7 9. "Design-build" means a project delivery method in which:
8 (a) There is a single contract for design services and construction
9 services.
10 (b) Design and construction of the project may be in sequential phases
11 or concurrent phases.
12 (c) Finance services, maintenance services, operations services,
13 preconstruction services and other related services may be included.
- 14 10. "Design requirements":
15 (a) Means at a minimum the agent's written description of the project
16 or service to be procured, including:
17 (i) The required features, functions, characteristics, qualities and
18 properties.
19 (ii) The anticipated schedule, including start, duration and
20 completion.
21 (iii) The estimated budgets applicable to the specific procurement for
22 design and construction and, if applicable, for operation and maintenance.
23 (b) May include:
24 (i) Drawings and other documents illustrating the scale and
25 relationship of the features, functions and characteristics of the project,
26 which shall all be prepared by an architect or engineer, as appropriate, who
27 is registered pursuant to section 32-121.
28 (ii) Additional design information or documents that the agent elects
29 to include.
- 30 11. "Design services" means architect services, engineer services or
31 landscape architect services.
- 32 12. "Direct selection" means the selection of a technical registrant
33 without the requirement of advertising or the use of a current register.
- 34 13. "Engineer services" means those professional engineer services that
35 are within the scope of engineering practice as provided in title 32,
36 chapter 1.
- 37 14. "Finance services" means financing for a construction services
38 project.
- 39 15. "Horizontal construction" means CONSTRUCTION OF highways, roads,
40 streets, bridges, canals, floodways, earthen dams, ~~and~~ landfills AND AIRPORT
41 RUNWAYS, TAXIWAYS AND APRONS.
- 42 16. "Job-order-contracting" means a project delivery method in which:
43 (a) The contract is a requirements contract for indefinite quantities
44 of construction.

1 (b) The construction to be performed is specified in job orders issued
2 during the contract.

3 (c) Finance services, maintenance services, operations services,
4 preconstruction services, design services and other related services may be
5 included.

6 17. "Landscape architect services" means those professional landscape
7 architect services that are within the scope of landscape architectural
8 practice as provided in title 32, chapter 1.

9 18. "Maintenance services" means routine maintenance, repair and
10 replacement of existing facilities, structures, buildings or real property.

11 19. "Materials":

12 (a) Means all property, including equipment, supplies, printing,
13 insurance and leases of property.

14 (b) Does not include land, a permanent interest in land or real
15 property or leasing space.

16 20. "Operations services" means routine operation of existing
17 facilities, structures, buildings or real property.

18 21. "Person" means any corporation, business, individual, union,
19 committee, club, other organization or group of individuals.

20 22. "Preconstruction services" means ~~advice~~ SERVICES during the design
21 phase.

22 23. "Procurement":

23 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
24 any materials, services, construction or construction services.

25 (b) Includes all functions that pertain to obtaining any material,
26 services, construction or construction services, including description of
27 requirements, selection and solicitation of sources, preparation and award of
28 contract and all phases of contract administration.

29 24. "Public competition" means a competitive procurement process
30 pursuant to section 34-103, subsection G that includes advertising in a
31 public newspaper and a qualification-based selection process.

32 25. "Services":

33 (a) Means the furnishing of labor, time or effort by a contractor or
34 subcontractor that does not involve the delivery of a specific end product
35 other than required reports and performance.

36 (b) Does not include employment agreements or collective bargaining
37 agreements.

38 ~~26. "Specific single project" means one or more facilities at a single
39 location, at a common location or, if for a similar purpose, at multiple
40 locations.~~

41 ~~27.~~ 26. "Subcontractor" means a person who contracts to perform work
42 or render service to a contractor or to another subcontractor as a part of a
43 contract with an agent.

44 ~~28.~~ 27. "Technical registrant" means a person who provides any of the
45 professional services listed in title 32, chapter 1.

1 Sec. 7. Section 34-102, Arizona Revised Statutes, is amended to read:

2 34-102. Multiple contracts; professional services

3 A. For professional services that are provided by a technical
4 registrant, an agent may procure and award multiple contracts from a single
5 solicitation under section 34-103 or ~~34-603~~ CHAPTER 6 OF THIS TITLE, as
6 applicable, except that professional services that are part of design-build
7 construction services may not be procured under this subsection. Each of the
8 multiple contracts for professional services ~~THAT ARE PROCURED IN A~~
9 ~~PROCUREMENT~~ must have a term not exceeding five years ~~AFTER THE DATE OF THE~~
10 ~~CONTRACT AWARD OF THE FIRST CONTRACT UNDER THE PROCUREMENT~~ and may continue
11 in effect after the five year term for professional services on projects
12 commenced within the five year term.

13 B. In a solicitation for multiple contracts for professional services
14 by technical registrants, ~~+~~

15 ~~1. Any publication shall include the fact that multiple contracts may~~
16 ~~or will be awarded, shall state the number of contracts that may or will be~~
17 ~~awarded and shall describe the services to be performed under each contract.~~
18 ~~If the solicitation is under section 34-603, subsection C, the request for~~
19 ~~qualifications shall also contain this information.~~

20 ~~2. There shall be a single selection process for all of the multiple~~
21 ~~contracts, except that if the solicitation is under section 34-103,~~
22 ~~subsections E and F or under section 34-603, subsection C there shall be a~~
23 ~~separate final list for each contract and a separate contract negotiation for~~
24 ~~each contract. However, if the solicitation specifies that all of the~~
25 ~~multiple contracts will be awarded to a single contractor, there may be a~~
26 ~~single final list and a single negotiation for all of the multiple contracts.~~

27 ~~3.~~ the agent may award all of the multiple contracts to one contractor
28 or may award the multiple contracts to multiple contractors.

29 C. ~~Except for construction manager at risk construction services for~~
30 ~~horizontal construction and design build construction services for horizontal~~
31 ~~construction, Multiple contracts for construction manager at risk~~
32 ~~construction services, design build construction services or THE SAME~~
33 ~~job-order-contracting construction services TO BE AWARDED TO SEPARATE PERSONS~~
34 ~~OR FIRMS may be procured in a single solicitation as provided in section~~
35 ~~34-603, subsection C~~ 34-604. AN AGENT MAY NOT PROCURE MULTIPLE CONTRACTS FOR
36 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR FOR DESIGN-BUILD
37 CONSTRUCTION SERVICES UNDER THIS CHAPTER OR CHAPTER 6 OF THIS TITLE.

38 Sec. 8. Section 34-103, Arizona Revised Statutes, is amended to read:

39 34-103. Employment of technical registrants for work on public
40 buildings and structures; direct selection; final
41 list selection; public competition

42 A. An agent shall procure professional services from a technical
43 registrant in the manner prescribed in chapter 6 of this title if either of
44 the following applies:

1 1. The contract is with a technical registrant other than an architect
2 and is for an amount of more than five hundred thousand dollars.

3 2. The contract is with an architect and is for an amount of more than
4 two hundred fifty thousand dollars.

5 B. An agent may procure professional services from a technical
6 registrant in the manner prescribed in chapter 6 of this title or as
7 prescribed in subsection D if either of the following applies:

8 1. The contract is with a technical registrant other than an architect
9 and is for an amount of five hundred thousand dollars or less.

10 2. The contract is with an architect and is for an amount of two
11 hundred fifty thousand dollars or less.

12 C. If authority is given by law to an agent to construct a building or
13 structure, or additions to or alterations of existing buildings, an agent
14 shall employ an architect or engineer, or both, as warranted by the type of
15 construction, if the agent deems the work to be of a nature that requires
16 such employment.

17 D. An agent may employ a technical registrant by direct selection, by
18 public competition pursuant to subsection G or pursuant to subsections E and
19 F if either of the following applies:

20 1. The contract is with a technical registrant other than an architect
21 and is for an amount of five hundred thousand dollars or less.

22 2. The contract is with an architect and is for an amount of two
23 hundred fifty thousand dollars or less.

24 E. The agent may elect to employ a technical registrant by encouraging
25 persons or firms engaged in the lawful practice of the profession to submit
26 annually a statement of qualifications and experience. If the agent elects
27 to employ a technical registrant by this method, the agent shall initiate an
28 appropriately qualified selection committee for each procurement, which may
29 include one **CONTRACT** or ~~more~~ **MULTIPLE** contracts, in accordance with rules
30 adopted by the agent. The selection committee shall evaluate current
31 statements of qualifications and experience on file with the agent together
32 with those that may be submitted by other persons or firms regarding the
33 procurement. If possible and practicable, the selection committee shall
34 conduct interviews with at least three persons or firms regarding the
35 procurement and the relative methods of furnishing the required services and,
36 if possible, shall select, in order of preference and based on criteria
37 established and published by the selection committee, a separate final list
38 for each contract being procured of at least three of the persons or firms
39 deemed to be the most qualified to provide the services required **OR, IF**
40 **MULTIPLE CONTRACTS ARE BEING PROCURED AND WILL ALL BE AWARDED TO THE SAME**
41 **TECHNICAL REGISTRANT, A SINGLE FINAL LIST OF AT LEAST THREE PERSONS OR FIRMS**
42 **DEEMED TO BE THE MOST QUALIFIED TO PROVIDE THE SERVICES REQUIRED.** The
43 selection committee shall base the selection of each final list and the order
44 of preference on each final list on demonstrated competence and
45 qualifications only. The agent and the selection committee shall not request

1 or consider fees, price, man-hours or any other cost information at any point
2 in the selection process under this subsection, including the selection of
3 the persons or firms to be interviewed, the selection of the persons and
4 firms to be on a final list, in determining the order of preference of
5 persons and firms on a final list or for any other purpose in the selection
6 process.

7 F. After ~~a~~ EACH final list is selected ~~for each contract included in~~
8 ~~the procurement~~, the agent shall enter into ~~separate~~ negotiations ~~for a~~
9 ~~contract~~ with the highest qualified person or firm on the final list for the
10 SINGLE contract OR MULTIPLE CONTRACTS determined under subsection E for the
11 professional services. The negotiations shall include consideration of
12 compensation and other contract terms that the agent determines to be fair
13 and reasonable to the agent. In making this determination, the agent shall
14 take into account the estimated value, the scope, the complexity and the
15 nature of the professional services to be rendered. If the agent is not able
16 to negotiate a satisfactory contract with the highest qualified person or
17 firm on the final list for the SINGLE contract OR THE MULTIPLE CONTRACTS at a
18 price and on other contract terms the agent determines to be fair and
19 reasonable, the agent shall formally terminate negotiations with that person
20 or firm. The agent may enter into negotiations with the next most qualified
21 person or firm on the final list ~~for the contract~~ in sequence until an
22 agreement is reached or a determination is made to reject all persons or
23 firms on the final list for the contract. IF THE AGENT TERMINATES
24 NEGOTIATIONS WITH A PERSON OR FIRM ON THE FINAL LIST FOR A CONTRACT OR
25 MULTIPLE CONTRACTS AND COMMENCES NEGOTIATIONS WITH ANOTHER PERSON OR FIRM ON
26 THE FINAL LIST FOR THAT CONTRACT OR THOSE MULTIPLE CONTRACTS, THE AGENT SHALL
27 NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO THE SINGLE
28 CONTRACT OR MULTIPLE CONTRACTS FOR THE PROFESSIONAL SERVICES COVERED BY THAT
29 FINAL LIST WITH ANY PERSON OR FIRM ON THAT FINAL LIST WITH WHOM THE AGENT HAS
30 TERMINATED NEGOTIATIONS.

31 G. If competitive designs are solicited, the agent shall publish
32 notice of the competition at least thirty days before the date set for
33 closing the competition. The notice shall include the following:

- 34 1. The project title and description.
- 35 2. The design and construction budget.
- 36 3. The competitive process and criteria to be used to select the
37 winning offeror.
- 38 4. The amount of the stipend to be paid to the unsuccessful offerors.
- 39 5. The offerors' response date.
- 40 6. The person to contact to obtain additional information regarding
41 the competition.
- 42 7. Any other requirements established by the agent as appropriate.

1 Sec. 9. Section 34-602, Arizona Revised Statutes, is amended to read:
2 34-602. Project delivery methods for design and construction
3 services

4 A. An agent may procure design services, construction and construction
5 services, as applicable, under any of the following project delivery methods:
6 1. Design-bid-build.
7 2. Construction-manager-at-risk.
8 3. Design-build.
9 4. Job-order-contracting.

10 B. Except as provided in section 41-2501, subsection C and section
11 41-2535, subsection D, for the design-bid-build project delivery method, the
12 agent shall procure:

13 1. Design services as provided in this chapter and chapter 1, article
14 1 of this title.

15 2. Construction by competitive sealed bidding pursuant to chapter 2,
16 articles 1, 2 and 3 of this title and pursuant to rules adopted by the agent
17 pursuant to section 41-2501, subsection C.

18 C. An agent shall procure construction services under the
19 construction-manager-at-risk, design-build and job-order-contracting project
20 delivery methods pursuant to this chapter.

21 D. An agent shall procure design services relating to
22 construction-manager-at-risk construction services projects pursuant to
23 section 34-103, ~~or~~ 34-603 OR 34-604, as applicable.

24 E. For job-order-contracting construction services projects, if the
25 agent does not include design services in the job-order-contracting
26 construction services contract, the agent shall procure any design services
27 relating to the job-order-contracting construction services projects under
28 the contract pursuant to section 34-103, ~~or~~ 34-603 OR 34-604, as applicable.

29 Sec. 10. Section 34-603, Arizona Revised Statutes, is amended to read:
30 34-603. Procurement of single contracts for professional
31 services and construction-manager-at-risk,
32 design-build and job-order-contracting construction
33 services; definition

34 A. Except for services ~~THAT ARE UNDER A SINGLE CONTRACT AND THAT~~ an
35 agent procures pursuant to section ~~34-103 or 34-604~~ 34-612, an agent shall
36 procure ~~A SINGLE CONTRACT FOR~~ the following services pursuant to this
37 section:

- 38 1. Architect services.
- 39 2. Construction-manager-at-risk construction services.
- 40 3. Design-build construction services.
- 41 4. Engineer services.
- 42 5. Job-order-contracting construction services.
- 43 6. Landscape architect services.
- 44 7. Assayer services.
- 45 8. Geologist services.

1 9. Land surveying services.

2 B. An agent shall provide notice of each procurement of A SINGLE
3 CONTRACT FOR professional services or construction services specified in this
4 section and shall award ~~contracts~~ THE SINGLE CONTRACT on the basis of
5 demonstrated competence and qualifications for the type of professional
6 services or construction services pursuant to the procedures prescribed in
7 this section.

8 C. In ~~the~~ A procurement of A SINGLE CONTRACT FOR professional services
9 or construction services pursuant to this section:

10 1. THE FOLLOWING REQUIREMENTS APPLY:

11 (a) THE AGENT AND THE SELECTION COMMITTEE SHALL NOT REQUEST OR
12 CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN
13 THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION D OF THIS
14 SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE INTERVIEWED, THE
15 SELECTION OF PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN DETERMINING THE
16 ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR FOR ANY OTHER
17 PURPOSE IN THE SELECTION PROCESS.

18 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
19 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON THE FINAL LIST
20 AND THEIR ORDER ON THE FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND
21 SHALL CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE
22 AGENT FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER FACTORS OR
23 CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER ACTIONS.

24 (c) AN AGENT IS LIMITED TO ONE CONTRACT IN EACH PROCUREMENT UNDER THIS
25 SECTION, EXCEPT THAT AN AGENT MAY ENTER INTO ONE CONTRACT FOR THE DESIGN
26 PHASE AND A SECOND CONTRACT FOR THE CONSTRUCTION PHASE FOR CONSTRUCTION
27 MANAGER-AT-RISK CONSTRUCTION SERVICES AND DESIGN-BUILD CONSTRUCTION SERVICES
28 CONTRACTED BY NEGOTIATION UNDER SUBSECTION E OF THIS SECTION.

29 (d) ALL CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR
30 DESIGN-BUILD CONSTRUCTION SERVICES INCLUDED IN A PROCUREMENT UNDER THIS
31 SECTION SHALL BE LIMITED TO CONSTRUCTION SERVICES TO BE PERFORMED AT A SINGLE
32 LOCATION, A COMMON LOCATION OR, IF THE CONSTRUCTION SERVICES ARE ALL FOR A
33 SIMILAR PURPOSE, MULTIPLE LOCATIONS. FOR CONSTRUCTION-MANAGER-AT-RISK
34 CONSTRUCTION SERVICES AND DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED
35 AT MULTIPLE LOCATIONS, THE REQUEST FOR QUALIFICATIONS MUST INCLUDE A BRIEF
36 DESCRIPTION OF THE CONSTRUCTION SERVICES TO BE PERFORMED AT EACH LOCATION AND
37 A BUDGET ESTIMATE FOR THE CONSTRUCTION SERVICES TO BE PERFORMED AT EACH
38 LOCATION.

39 (e) IF THE AGENT ENTERS INTO THE FIRST CONTRACT FOR PRECONSTRUCTION
40 SERVICES, CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES AS THE RESULT OF THE
41 PROCUREMENT, THE PROCUREMENT UNDER THIS SECTION ENDS. AFTER EXECUTION OF
42 THAT FIRST CONTRACT THE AGENT MAY NOT USE THE PROCUREMENT OR THE EXISTING
43 FINAL LIST IN THE PROCUREMENT AS THE BASIS FOR ENTERING INTO A CONTRACT WITH
44 ANY OTHER PERSON OR FIRM THAT PARTICIPATED IN THE PROCUREMENT.

1 (f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
2 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
3 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

4 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
5 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
6 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
7 PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
8 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
9 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE AGENT MAY
10 ELECT TO TERMINATE THE PROCUREMENT.

11 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
12 CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS
13 SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS
14 TO THE REQUEST FOR QUALIFICATIONS OR, IF ONE OR MORE PERSONS OR FIRMS DROP
15 OUT OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR
16 FIRM REMAINS IN THE PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE
17 PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE AGENT DETERMINES IN WRITING
18 THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS FAIR AND
19 REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD REASONABLE
20 OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A RESOLICITATION.

21 (iii) IF A PERSON OR FIRM ON THE FINAL LIST WITHDRAWS OR IS REMOVED
22 FROM THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE
23 BEST INTEREST OF THE AGENT, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON
24 OR FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
25 QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION
26 COMMITTEE AS THE NEXT MOST QUALIFIED.

27 ~~1.~~ 2. An agent shall issue a request for qualifications for each
28 ~~contract~~ PROCUREMENT and publish notice of the request for qualifications.
29 This notice shall be published by advertising in a newspaper of general
30 circulation in the county in which the agent is located for two consecutive
31 publications if it is a weekly newspaper or for two publications that are at
32 least six but no more than ten days apart if it is a daily newspaper. The
33 request for qualifications shall:

34 (a) STATE THAT ONE CONTRACT MAY OR WILL BE AWARDED AND THE SERVICES TO
35 BE PERFORMED UNDER THE CONTRACT.

36 ~~(a) (b) Include the number of persons or firms to be included on the~~
37 ~~final list. In a request for qualifications for a horizontal construction~~
38 ~~project, STATE THAT THERE WILL BE A SINGLE FINAL LIST OF THREE PERSONS OR~~
39 ~~FIRMS, EXCEPT THAT IN A PROCUREMENT OF HORIZONTAL CONSTRUCTION, THE FINAL~~
40 ~~LIST SHALL HAVE THE NUMBER OF PERSONS OR FIRMS DETERMINED BY THE AGENT, WHICH~~
41 ~~SHALL BE at least three but not more than five persons or firms. shall be on~~
42 ~~the final list. In all other requests for qualifications, three persons or~~
43 ~~firms shall be on the final list.~~

44 ~~(b) State the criteria to be used by the selection committee to select~~
45 ~~the person or firm to perform the professional services or the construction~~

1 ~~services. The request for qualifications shall also state in a manner~~
2 ~~determined by the agent the relative weight of the selection criteria and, if~~
3 ~~required under paragraph 7, subdivision (b) of this subsection, that one of~~
4 ~~the criteria will be the person's or firm's subcontractor selection plan or~~
5 ~~procedures to implement the agent's subcontractor selection plan.~~

6 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
7 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
8 EXCEPT THAT FOR CONSTRUCTION SERVICES ONE OF THE CRITERIA SHALL BE THE
9 PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR PROCEDURES TO IMPLEMENT
10 THE AGENT'S SUBCONTRACTOR SELECTION PLAN:

11 (i) IF INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
12 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
13 BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND THE REQUEST
14 FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
15 THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON THE
16 FINAL LIST AND IN DETERMINING THEIR ORDER ON THE FINAL LIST. THE FINAL LIST
17 SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE SELECTION
18 CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR FIRMS TO BE
19 INTERVIEWED.

20 (ii) IF INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS
21 SHALL STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
22 CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON THE FINAL LIST AND
23 IN DETERMINING THEIR ORDER ON THE FINAL LIST.

24 ~~(e)~~ (d) If the agent will hold interviews as part of the selection
25 process, state that interviews ~~shall~~ WILL be held AND THAT THE INTERVIEWS
26 WILL BE with at least three ~~and no~~ BUT NOT more than five persons or firms.
27 ~~, except that if multiple contracts are being procured under a single request~~
28 ~~for qualifications solicitation under this subsection or a single request for~~
29 ~~qualifications and request for proposals solicitation under this subsection~~
30 ~~and subsection F of this section, the number to be interviewed shall be at~~
31 ~~least three and not more than the number of contracts plus two.~~

32 (e) FOR PROCUREMENTS OF CONSTRUCTION SERVICES, INCLUDE EITHER:

33 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
34 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
35 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
36 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
37 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

38 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE AGENT THAT APPLIES
39 TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE CONSTRUCTION SERVICES
40 AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED ON QUALIFICATIONS ALONE
41 OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND NOT BASED ON PRICE ALONE
42 AND A REQUIREMENT THAT EACH PERSON OR FIRM MUST SUBMIT A DESCRIPTION OF THE
43 PROCEDURES IT PROPOSES TO USE TO IMPLEMENT THE AGENT'S SUBCONTRACTOR
44 SELECTION PLAN.

1 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
2 AGENT'S PROTEST POLICY AND PROCEDURES OR, IF THE AGENT DOES NOT HAVE A
3 PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE PROTEST POLICY AND
4 PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION APPLY TO ANY PROTESTS
5 IN CONNECTION WITH THE PROCUREMENT.

6 ~~2-~~ 3. An agent shall initiate an appropriately qualified selection
7 committee for each request for qualifications. THE AGENT SHALL ENSURE THAT
8 THE SELECTION COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION
9 COMMITTEE. If the agent is procuring professional services, the agent shall
10 determine the number and qualifications of the selection committee members.
11 A selection committee for the procurement of construction services shall not
12 have more than seven members, except that, if the contract involves the agent
13 and additional governmental or private participants, the number of members of
14 the selection committee shall be increased by one for each additional
15 participant, except that the maximum number of members of the selection
16 committee is nine. The selection committee for construction services shall
17 include at least one person who is a senior management employee of a licensed
18 contractor and one person who is an architect or an engineer who is
19 registered pursuant to section 32-121. These members may be employees of the
20 agent or outside consultants. Outside contractors, architects and engineers
21 serving on a selection committee shall not receive compensation from the
22 agent for performing this service, but the agent may elect to reimburse
23 outside contractors, architects and engineers for travel, lodging and other
24 expenses incurred in connection with service on a selection committee. A
25 person who is a member of a selection committee shall not be a contractor
26 under a contract awarded under the procurement or provide ANY PROFESSIONAL
27 SERVICES, construction, construction services, materials or OTHER services
28 under the contract. The selection committee AND THE AGENT shall DO THE
29 FOLLOWING:

30 ~~(a) Evaluate the statements of qualifications and performance data~~
31 ~~that are submitted in response to the agent's request for qualifications.~~

32 ~~(b) (a) If determined by the agent and included by the agent in the~~
33 ~~request for qualifications, IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR~~
34 ~~QUALIFICATIONS:~~

35 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSONS OR FIRMS TO BE
36 INTERVIEWED BY EVALUATING THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE
37 DATA THAT ARE SUBMITTED IN RESPONSE TO THE AGENT'S REQUEST FOR QUALIFICATIONS
38 BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
39 CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO DETERMINE THE
40 PERSONS OR FIRMS TO BE INTERVIEWED.

41 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
42 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
43 ON THE FINAL LIST AND TO DETERMINE THEIR ORDER ON THE FINAL LIST ARE NOT
44 INCLUDED IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD
45 THE AGENT SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE INTERVIEWED THE

1 SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO BE USED
2 TO SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND TO DETERMINE THEIR ORDER
3 ON THE FINAL LIST. THESE SELECTION CRITERIA AND RELATIVE WEIGHT MAY BE
4 DIFFERENT THAN THE SELECTION CRITERIA AND RELATIVE WEIGHT USED TO DETERMINE
5 THE PERSONS OR FIRMS TO BE INTERVIEWED.

6 (iii) THE SELECTION COMMITTEE SHALL conduct interviews with the number
7 of persons or firms to be interviewed as stated in the request for
8 qualifications regarding the professional services or construction services
9 and the relative methods of approach for furnishing the required professional
10 services or construction services.

11 ~~(c) (b) After any interviews, in order of preference, based on the~~
12 ~~criteria and the weighting of criteria included in the request for~~
13 ~~qualifications, select a final list for each contract of persons or firms the~~
14 ~~selection committee deems to be the most qualified to provide the~~
15 ~~professional services or construction services~~ BASED ONLY ON THE SELECTION
16 CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA SPECIFIED AS PROVIDED
17 IN THIS SECTION FOR SELECTION OF THE PERSONS OR FIRMS ON THE FINAL LIST AND
18 THEIR ORDER ON THE FINAL LIST, THE SELECTION COMMITTEE SHALL SELECT THE
19 PERSONS OR FIRMS FOR THE FINAL LIST and, in the case of A FINAL LIST FOR a
20 contract that will be negotiated under subsection E of this section, rank the
21 persons or firms on the final list in order of preference. ~~The selection~~
22 ~~committee shall base the selection of the final list and the order of~~
23 ~~preference on demonstrated competence and qualifications only. If the~~
24 ~~request for qualifications solicited multiple contracts, the selection~~
25 ~~committee shall select a separate final list for each contract, except that~~
26 ~~if multiple contracts are being procured and if the request for~~
27 ~~qualifications specified that all of the multiple contracts will be awarded~~
28 ~~to a single contractor, the selection committee may select a single final~~
29 ~~list for all of the multiple contracts. The number of persons or firms on~~
30 ~~the final list shall be the number of persons or firms specified in the~~
31 ~~request for qualifications, except that:~~

32 ~~(i) If a smaller number of responsive and responsible persons or firms~~
33 ~~respond to the solicitation, the agent may elect to have the selection~~
34 ~~committee proceed with the selection process, including interviews and the~~
35 ~~final list, with the remaining persons or firms if at least two persons or~~
36 ~~firms remain or the agent may readvertise pursuant to this subsection as the~~
37 ~~agent deems necessary or appropriate.~~

38 ~~(ii) If only one responsive and responsible person or firm responds to~~
39 ~~a solicitation for a contract or multiple contracts to be negotiated pursuant~~
40 ~~to subsection E of this section, the agent may elect to proceed with only one~~
41 ~~person or firm in the selection process and may award the contract or~~
42 ~~contracts to a single person or firm if the agent determines in writing that~~
43 ~~the fee negotiated pursuant to subsection E of this section is fair and~~
44 ~~reasonable and that either other prospective persons or firms had reasonable~~
45 ~~opportunity to respond or there is not adequate time for a resolicitation.~~

1 ~~(iii) If a person or firm on the final list withdraws or is removed~~
2 ~~from the selection process and the selection committee determines that it is~~
3 ~~in the best interest of the agent, the selection committee may replace that~~
4 ~~person or firm with another person or firm that submitted qualifications and~~
5 ~~that is selected by the selection committee as the next most qualified.~~

6 ~~(d) Base the selection of the final list and order of preference on~~
7 ~~the final list on demonstrated competence and qualifications only.~~

8 ~~3. Except for construction manager at risk construction services for~~
9 ~~horizontal construction and design build construction services for horizontal~~
10 ~~construction, an agent may procure multiple contracts for professional~~
11 ~~services, construction manager at risk construction services, design build~~
12 ~~construction services or job order contracting construction services under a~~
13 ~~single request for qualifications solicitation under this subsection or, for~~
14 ~~job order contracting construction services or design build construction~~
15 ~~services, under a single request for qualifications and request for proposals~~
16 ~~solicitation under this subsection and subsection F of this section. If an~~
17 ~~agent does this:~~

18 ~~(a) The advertisement and the request for qualifications shall state~~
19 ~~that multiple contracts may or will be awarded, shall state the number of~~
20 ~~contracts that may or will be awarded and shall describe the services to be~~
21 ~~performed under each contract.~~

22 ~~(b) There shall be a single selection process for all of the multiple~~
23 ~~contracts, except that for each contract there shall be a separate final list~~
24 ~~and a separate negotiation under subsection E of this section or a separate~~
25 ~~request for proposals competition under subsection F of this section.~~
26 ~~However, if the request for qualifications specifies that all of the multiple~~
27 ~~contracts will be awarded to a single contractor, there may be a single final~~
28 ~~list and a single negotiation for all of the multiple contracts under~~
29 ~~subsection E of this section or a single request for proposals competition~~
30 ~~under subsection F of this section.~~

31 ~~(c) The agent may award all of the multiple contracts to one~~
32 ~~contractor or may award the multiple contracts to multiple contractors.~~

33 ~~4. For professional services, an agent may procure multiple contracts~~
34 ~~using a single request for qualifications solicitation under this subsection,~~
35 ~~except that professional services that are part of design build construction~~
36 ~~services may not be procured under this paragraph. Each of the multiple~~
37 ~~contracts for professional services must have a term not exceeding five years~~
38 ~~and may continue in effect after the five year term for professional services~~
39 ~~on projects commenced within the five year term.~~

40 ~~5. An agent may procure multiple contracts for job order contracting~~
41 ~~construction services using a single request for qualifications solicitation~~
42 ~~under this subsection or using a single request for qualifications and~~
43 ~~request for proposals solicitation under this subsection and subsection F of~~
44 ~~this section.~~

1 ~~6. Except for horizontal construction, an agent may procure multiple~~
2 ~~contracts for construction manager at risk construction services or for~~
3 ~~design build construction services using a single request for qualifications~~
4 ~~solicitation under this subsection or for design build construction services~~
5 ~~using a single request for qualifications and request for proposals~~
6 ~~solicitation under this subsection and subsection F of this section but in~~
7 ~~either case only for a specific single project. Portions of the specific~~
8 ~~single project shall be allocated to separate contracts.~~

9 ~~7. For construction manager at risk construction services,~~
10 ~~design build construction services and job order contracting construction~~
11 ~~services if the contract will be negotiated under subsection E of this~~
12 ~~section or for job order contracting construction services if the contract~~
13 ~~will be awarded pursuant to subsection F of this section:~~

14 ~~(a) The person or firm selected to perform the construction services~~
15 ~~must select subcontractors based on qualifications alone or on a combination~~
16 ~~of qualifications and price and shall not select subcontractors based on~~
17 ~~price alone. A qualifications and price selection may be a single step~~
18 ~~selection based on a combination of qualifications and price or a two step~~
19 ~~selection. In a two step selection, the first step shall be based on~~
20 ~~qualifications alone and the second step may be based on a combination of~~
21 ~~qualifications and price or on price alone.~~

22 ~~(b) The agent shall include in the request for qualifications either:~~

23 ~~(i) A requirement that each person or firm submit a proposed~~
24 ~~subcontractor selection plan, a requirement that the proposed subcontractor~~
25 ~~selection plan must select subcontractors based on qualifications alone or on~~
26 ~~a combination of qualifications and price and shall not select subcontractors~~
27 ~~based on price alone and, as a selection criteria under the request for~~
28 ~~qualifications, an evaluation of each person's or firm's proposed~~
29 ~~subcontractor selection plan.~~

30 ~~(ii) A subcontractor selection plan adopted by the agent that will~~
31 ~~apply to the person or firm that is selected to perform the construction~~
32 ~~services and that requires subcontractors to be selected based on~~
33 ~~qualifications alone or on a combination of qualifications and price and not~~
34 ~~based on price alone, a requirement that each person or firm must submit a~~
35 ~~description of the procedures it proposes to use to carry out the agent's~~
36 ~~subcontractor selection plan and, as a selection criteria under the request~~
37 ~~for qualifications, an evaluation of each person's or firm's proposed~~
38 ~~procedures to carry out the agent's subcontractor selection plan.~~

39 ~~(c) The agent shall include in its contract with the selected person~~
40 ~~or firm either:~~

41 ~~(i) If the agent included its subcontractor selection plan in the~~
42 ~~request for qualifications, the agent's subcontractor selection plan and the~~
43 ~~procedures proposed by the selected person or firm in submitting its~~
44 ~~qualifications with those modifications to the procedures as the agent and~~
45 ~~the selected person or firm agree.~~

1 ~~(ii) If the agent did not include its subcontractor selection plan in~~
2 ~~the request for qualifications, the subcontractor selection plan proposed by~~
3 ~~the selected person or firm in submitting its qualifications with those~~
4 ~~modifications as the agent and the selected person or firm agree.~~

5 ~~(d) In making the selection of subcontractors, the person or firm~~
6 ~~selected to perform the construction services shall use the subcontractor~~
7 ~~selection plan and any procedures included in its contract.~~

8 ~~8. The agent and the selection committee shall not request or consider~~
9 ~~fees, price, man hours or any other cost information at any point in the~~
10 ~~selection process under this subsection or subsection D of this section,~~
11 ~~including the selection of the persons or firms to be interviewed, the~~
12 ~~selection of the persons or firms to be on the final list, in determining the~~
13 ~~order of preference of persons or firms on the final list or for any other~~
14 ~~purpose in the selection process.~~

15 ~~9. For construction manager at risk construction services and~~
16 ~~design-build construction services, the contract or contracts under a single~~
17 ~~request for qualifications solicitation or for design-build construction~~
18 ~~services a single request for qualifications and request for proposals~~
19 ~~solicitation shall be limited to a specific single project.~~

20 (c) BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE HIGHEST
21 RANKING PERSON OR FIRM ON THE FINAL LIST THAT IT IS THE HIGHEST RANKING
22 PERSON OR FIRM, THE AGENT SHALL NOTIFY EACH OF THE FOLLOWING THAT IT IS NOT
23 THE HIGHEST PERSON OR FIRM ON THE FINAL LIST OR THAT ANOTHER PERSON OR FIRM
24 IS THE HIGHEST RANKING PERSON OR FIRM ON THE FINAL LIST:

25 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED.

26 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
27 MADE SUBMITTALS.

28 (d) THE SELECTION COMMITTEE SHALL COMPLETE A CONSOLIDATED SCORING
29 SHEET SHOWING ALL PERSONS OR FIRMS THAT WERE INTERVIEWED OR, IF NO INTERVIEWS
30 WERE HELD, SHOWING ALL PERSONS OR FIRMS THAT SUBMITTED QUALIFICATIONS,
31 SHOWING THE FINAL RANK OR SCORE FOR EACH PERSON OR FIRM AS TO EACH SELECTION
32 CRITERIA, SHOWING THE FINAL OVERALL RANK OR SCORE FOR EACH PERSON OR FIRM AND
33 PRESCRIBING THE CRITERIA AND RELATIVE WEIGHT OF THE CRITERIA USED TO SELECT
34 THE PERSONS OR FIRMS FOR THE FINAL LIST AND THEIR ORDER ON THE FINAL LIST.

35 D. An agent shall award ~~a~~ THE SINGLE contract ~~for professional~~
36 ~~services or for construction services to one of the persons or firms on the~~
37 ~~final list for that contract prepared pursuant to subsection C of this~~
38 ~~section~~ UNDER THE PROCUREMENT as provided in subsection E or F of this
39 section. ~~, except that, if fewer than the number of persons or firms on the~~
40 ~~final list respond to the request for proposals pursuant to subsection F of~~
41 ~~this section but at least two persons or firms on the final list submit~~
42 ~~responsive proposals or if one or more of the persons or firms on the final~~
43 ~~list drop out of the selection process pursuant to subsection E or F of this~~
44 ~~section.~~

1 ~~1. If there are three or more remaining persons or firms, the agent~~
2 ~~shall proceed with the selection process.~~

3 ~~2. If there are only two remaining persons or firms, as the agent~~
4 ~~deems necessary and appropriate, the agent may elect to proceed with the~~
5 ~~selection process with the two persons or firms or may elect to terminate the~~
6 ~~selection process and may elect to readvertise pursuant to subsection C of~~
7 ~~this section.~~

8 ~~3. If there is only one remaining person or firm, the agent may award~~
9 ~~the contract to a single person or firm if the agent determines in writing~~
10 ~~that the fee negotiated pursuant to subsection E of this section is fair and~~
11 ~~reasonable and that either other prospective persons or firms had reasonable~~
12 ~~opportunity to respond or there is not adequate time for a resolicitation.~~

13 ~~E. For each contract included in the request for qualifications, the~~
14 ~~agent shall enter into separate negotiations for the contract with the~~
15 ~~highest qualified person or firm on the final list for that contract~~
16 ~~determined pursuant to subsection C of this section for the professional~~
17 ~~services or for the construction services. However, if the request for~~
18 ~~qualifications is for multiple contracts and specifies that all of the~~
19 ~~multiple contracts will be awarded to a single contractor, there may be a~~
20 ~~single negotiation for all of the multiple contracts. The negotiations shall~~
21 ~~include consideration of compensation and other contract terms that the agent~~
22 ~~determines to be fair and reasonable to the agent. In making this decision,~~
23 ~~the agent shall take into account the estimated value, the scope, the~~
24 ~~complexity and the nature of the professional services or construction~~
25 ~~services to be rendered.~~

26 THE AGENT SHALL CONDUCT NEGOTIATIONS WITH PERSONS
27 OR FIRMS ON THE FINAL LIST. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF
28 COMPENSATION AND OTHER CONTRACT TERMS THAT THE AGENT DETERMINES TO BE FAIR
29 AND REASONABLE TO THE AGENT. IN MAKING THIS DECISION, THE AGENT SHALL TAKE
30 INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF
31 THE PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES TO BE RENDERED. IF IN A
32 PROCUREMENT UNDER THIS SECTION THE AGENT TERMINATES NEGOTIATIONS WITH A
33 PERSON OR FIRM ON THE FINAL LIST AND COMMENCES NEGOTIATIONS WITH ANOTHER
34 PERSON OR FIRM ON THE FINAL LIST, THE AGENT SHALL NOT IN THAT PROCUREMENT
35 RECOMMENCE NEGOTIATIONS OR ENTER INTO A CONTRACT FOR THE CONSTRUCTION
36 SERVICES OR PROFESSIONAL SERVICES COVERED BY THE FINAL LIST WITH ANY PERSON
37 OR FIRM ON THE FINAL LIST WITH WHOM THE AGENT HAS TERMINATED NEGOTIATIONS.
38 THE PROCUREMENT IS FOR A SINGLE CONTRACT FOR CONSTRUCTION SERVICES OR
39 PROFESSIONAL SERVICES, AND THERE IS ONE FINAL LIST. THE AGENT SHALL ENTER
40 INTO NEGOTIATIONS WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL
41 LIST. If the agent is not able to negotiate a satisfactory contract with the
42 highest qualified person or firm on the final list, at compensation and on
43 other contract terms the agent determines to be fair and reasonable, the
44 agent shall formally terminate negotiations with that person or firm. The
45 agent ~~may~~ SHALL THEN undertake negotiations with the next most qualified
person or firm on the final list in sequence until an agreement is reached or

1 a determination is made to reject all persons or firms on the final list. ~~If~~
2 ~~a contract for construction services is entered into pursuant to this~~
3 ~~subsection:~~

4 ~~1. If the contract is for construction manager at risk construction~~
5 ~~services and includes preconstruction services by the contractor or if the~~
6 ~~contract is for design build construction services, the agent shall enter~~
7 ~~into a written contract with the contractor for preconstruction services~~
8 ~~under which contract the agent shall pay the contractor a fee for~~
9 ~~preconstruction services in an amount agreed by the agent and the contractor,~~
10 ~~and the agent shall not request or obtain a fixed price or a guaranteed~~
11 ~~maximum price for the construction from the contractor or enter into a~~
12 ~~construction contract with the contractor until after the agent has entered~~
13 ~~into the written contract for preconstruction services and a preconstruction~~
14 ~~services fee.~~

15 ~~2. Construction shall not commence until the agent and contractor~~
16 ~~agree in writing on either a fixed price that the agent will pay for the~~
17 ~~construction to be commenced or a guaranteed maximum price for the~~
18 ~~construction to be commenced.~~

19 F. As an alternative to subsection E of this section, an agent may
20 award **A SINGLE CONTRACT FOR** design-build construction services or
21 job-order-contracting construction services as follows:

22 1. The agent shall use the selection committee appointed for the
23 request for qualifications pursuant to subsection C of this section.

24 2. The agent shall issue a request for proposals to the persons or
25 firms on the final list developed pursuant to subsection C of this section.

26 3. ~~For design build construction services and job order contracting~~
27 ~~construction services,~~ The request for proposals shall include:

28 (a) The agent's project schedule and project final **BUDGET FOR** design
29 and construction ~~budget~~ or life cycle budget for a procurement that includes
30 maintenance services or operations services.

31 (b) A statement that the contract or contracts will be awarded to the
32 offeror whose proposal receives the highest number of points under a scoring
33 method.

34 (c) A description of the scoring method, including a list of the
35 factors in the scoring method and the number of points allocated to each
36 factor. The factors in the scoring method shall include:

37 (i) For design-build construction services only, demonstrated
38 compliance with the design requirements.

39 (ii) Offeror qualifications.

40 (iii) Offeror financial capacity.

41 (iv) Compliance with the agent's project schedule.

42 (v) For design-build construction services only, if the request for
43 proposals specifies that the agent will spend its project budget and not more
44 than its project budget and is seeking the best proposal for the project
45 budget, compliance of the offeror's price or life cycle price for

1 procurements that include maintenance services, operations services or
2 finance services with the agent's budget as prescribed in the request for
3 proposals.

4 (vi) For design-build construction services if the request for
5 proposals does not contain the specifications prescribed in item (v) and for
6 job-order-contracting construction services, the price or life cycle price
7 for procurements that include maintenance services, operations services or
8 finance services.

9 (vii) An offeror quality management plan.

10 (viii) Other evaluation factors as determined by the agent, if any.

11 (d) For design-build construction services only, the design
12 requirements.

13 (e) A requirement that each offeror submit separately a technical
14 proposal and a price proposal and that the offeror's entire proposal be
15 responsive to the requirements in the request for proposals. For
16 design-build construction services, the price in the price proposal shall be
17 a fixed price or a guaranteed maximum price.

18 (f) A statement that in applying the scoring method the selection
19 committee will separately evaluate the technical proposal and the price
20 proposal and will evaluate and score the technical proposal before opening
21 the price proposal.

22 (g) If the agent conducts discussions pursuant to paragraph 5 of this
23 subsection, a statement that discussions will be held and a requirement that
24 each offeror submit a preliminary technical proposal before the discussions
25 are held.

26 4. If the agent determines to conduct discussions pursuant to
27 paragraph 5 of this subsection, each offeror shall submit a preliminary
28 technical proposal to the agent before those discussions are held.

29 5. If determined by the agent and included by the agent in the request
30 for proposals, the selection committee shall conduct discussions with all
31 persons or firms that submit preliminary technical proposals. Discussions
32 shall be for the purpose of clarification to ~~assure~~ ENSURE full understanding
33 of, and responsiveness to, the solicitation requirements. Offerors shall be
34 accorded fair treatment with respect to any opportunity for discussion and
35 for clarification by the owner. Revision of preliminary technical proposals
36 shall be permitted after submission of preliminary technical proposals and
37 before award for the purpose of obtaining best and final proposals. In
38 conducting any discussions, information derived from proposals submitted by
39 competing offerors shall not be disclosed to other competing offerors.

40 6. After completion of any discussions pursuant to paragraph 5 of this
41 subsection or if no discussions are held, each offeror shall submit
42 separately the offeror's final technical proposal and its price proposal.

43 7. Before opening any price proposal, the selection committee shall
44 open the final technical proposals, evaluate the final technical proposals
45 and score the final technical proposals using the scoring method in the

1 request for proposals. No other factors or criteria may be used in the
2 evaluation and scoring.

3 8. After completion of the evaluation and scoring of all final
4 technical proposals, the selection committee shall open the price proposals,
5 evaluate the price proposals, score the price proposals and complete the
6 scoring of the entire proposals using the scoring method in the request for
7 proposals. No other factors or criteria may be used in the evaluation and
8 scoring. ~~THE SELECTION COMMITTEE SHALL COMPLETE A CONSOLIDATED SCORING SHEET~~
9 ~~SHOWING FOR EACH PERSON OR FIRM THAT SUBMITTED A PROPOSAL ITS FINAL SCORE FOR~~
10 ~~EACH FACTOR IN THE SCORING METHOD INCLUDED IN THE REQUEST FOR PROPOSALS AND~~
11 ~~ITS FINAL OVERALL SCORE. THE CONSOLIDATED SCORING SHEET SHALL ALSO INCLUDE~~
12 ~~THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE SCORING~~
13 ~~METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS INCLUDED IN~~
14 ~~THE REQUEST FOR PROPOSALS.~~

15 9. The agent shall award the contract or contracts to the responsive
16 and responsible offeror whose proposal receives the highest score under the
17 method of scoring in the request for proposals. No other factors or criteria
18 may be used in the evaluation. ~~BEFORE OR AT THE SAME TIME AS THE AGENT~~
19 ~~NOTIFIES THE WINNING OFFEROR THAT IT HAS WON, THE AGENT SHALL NOTIFY EACH~~
20 ~~OTHER OFFEROR EITHER THAT THE OFFEROR HAS NOT WON OR THAT ANOTHER OFFEROR HAS~~
21 ~~WON.~~

22 10. The contract or contracts file shall contain the basis on which the
23 award is made, ~~INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED~~
24 ~~UNDER SUBSECTION G OF THIS SECTION.~~

25 11. For design-build construction services only, the agent shall award
26 a stipulated fee equal to a percentage, as prescribed in the request for
27 proposals, of the agent's project final ~~BUDGET FOR~~ design and construction
28 ~~budget~~, as prescribed in the request for proposals, but not less than
29 two-tenths of one per cent of the project final ~~BUDGET FOR~~ design and
30 construction ~~budget~~ to each final list offeror who provides a responsive, but
31 unsuccessful, proposal. If the agent does not award a contract, all
32 responsive final list offerors shall receive the stipulated fee based on the
33 owner's ~~estimate of the~~ project final ~~BUDGET FOR~~ design and construction
34 ~~budget~~ as included in the request for proposals. The agent shall pay the
35 stipulated fee to each offeror within ninety days after the award of the
36 initial contract or the decision not to award a contract. In consideration
37 for paying the stipulated fee, the agent may use any ideas or information
38 contained in the proposals in connection with any contract awarded for the
39 project, or in connection with a subsequent procurement, without any
40 obligation to pay any additional compensation to the ~~unsuccessful~~ offerors.
41 Notwithstanding the other provisions of this paragraph, ~~an unsuccessful~~ A
42 final list offeror may elect to waive the stipulated fee. If ~~an unsuccessful~~
43 A final list offeror elects to waive the stipulated fee, the agent may not
44 use ideas and information contained in the offeror's proposal, except that
45 this restriction does not prevent the agent from using any idea or

1 information if the idea or information is also included in a proposal of an
2 offeror that accepts the stipulated fee.

3 G. AT A MINIMUM, THE AGENT SHALL RETAIN THE FOLLOWING FOR EACH
4 PROCUREMENT UNDER THIS SECTION:

5 1. FOR EACH REQUEST FOR QUALIFICATIONS PROCUREMENT PROCESS UNDER
6 SUBSECTION C OF THIS SECTION:

7 (a) IF INTERVIEWS WERE NOT HELD:

8 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
9 AND, IF DIFFERENT, THE SUBMITTAL OF THE PERSON OR FIRM WITH WHICH THE AGENT
10 ENTERS INTO A CONTRACT.

11 (ii) THE FINAL LIST.

12 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
13 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
14 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

15 (iv) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
16 THAT SUBMITTED QUALIFICATIONS ITS SCORE OR RANK ON EACH SELECTION CRITERIA
17 AND ITS OVERALL SCORE OR RANK.

18 (b) IF INTERVIEWS WERE HELD:

19 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
20 LIST AND, IF DIFFERENT, ALL SUBMITTALS OF THE PERSON OR FIRM WITH WHICH THE
21 AGENT ENTERS INTO A CONTRACT.

22 (ii) THE FINAL LIST.

23 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
24 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
25 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

26 (iv) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
27 THAT WAS INTERVIEWED ITS SCORE OR RANK ON EACH SELECTION CRITERIA AND ITS
28 OVERALL SCORE OR RANK.

29 2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION
30 F OF THIS SECTION:

31 (a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED
32 THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND, IF
33 DIFFERENT, THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM WITH WHICH THE
34 AGENT ENTERS INTO A CONTRACT.

35 (b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE
36 SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS
37 INCLUDED IN THE REQUEST FOR PROPOSALS.

38 (c) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
39 THAT SUBMITTED A PROPOSAL ITS FINAL SCORE FOR EACH FACTOR IN THE SCORING
40 METHOD INCLUDED IN THE REQUEST FOR PROPOSALS AND ITS FINAL OVERALL SCORE.

41 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
42 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

43 ~~G. 1. Until an award and execution of a contract by an agent~~ THE
44 AGENT AWARDS A CONTRACT OR TERMINATES THE PROCUREMENT, only the name of each
45 person or firm on the final list developed pursuant to subsection C of this

1 section may be made available to the public. All other information received
2 by the agent in response to the request for qualifications PURSUANT TO
3 SUBSECTION C OF THIS SECTION or contained in ~~the~~ proposals SUBMITTED PURSUANT
4 TO SUBSECTION F OF THIS SECTION shall be confidential in order to avoid
5 disclosure of the contents that may be prejudicial to competing SUBMITTERS
6 AND offerors during the selection process. ~~The proposals shall be open to
7 public inspection after the contract is awarded and the agent has executed
8 the contract.~~

9 2. AFTER THE AGENT AWARDS THE CONTRACT OR TERMINATES THE PROCUREMENT,
10 THE AGENT SHALL MAKE AVAILABLE TO THE PUBLIC ALL OF THE ITEMS THAT THE AGENT
11 IS REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS SECTION, EXCEPT THE
12 PROPOSALS SUBMITTED IN RESPONSE TO A REQUEST FOR PROPOSALS UNDER SUBSECTION F
13 OF THIS SECTION.

14 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
15 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE AGENT HAS ENTERED INTO A
16 CONTRACT OR TERMINATED THE PROCUREMENT. THE PROPOSALS SUBMITTED UNDER
17 SUBSECTION F OF THIS SECTION THAT THE AGENT IS REQUIRED TO RETAIN UNDER
18 SUBSECTION G OF THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC AFTER THE
19 AGENT HAS ENTERED INTO A CONTRACT OR TERMINATED THE PROCUREMENT.

20 4. To the extent that the offeror designates and the agent concurs,
21 trade secrets and other proprietary data contained in a proposal remain
22 confidential.

23 ~~H.~~ I. An agent may cancel a request for qualifications or a request
24 for proposals, ~~or~~ reject in whole or in part any or all SUBMITTALS OR
25 proposals, OR DETERMINE NOT TO ENTER INTO A SINGLE OR MULTIPLE CONTRACT as
26 specified in the solicitation if ~~it~~ THE AGENT DETERMINES IN THE AGENT'S
27 ABSOLUTE AND SOLE DISCRETION THAT THE ACTION is in the best interest of the
28 agent. The agent shall make the reasons for cancellation, ~~or~~ rejection OR
29 DETERMINATION NOT TO ENTER INTO A CONTRACT part of the contract file.

30 ~~I. Notwithstanding any other law:~~

31 ~~1. The contractor for design build or job order contracting
32 construction services is not required to be registered to perform design
33 services pursuant to title 32, chapter 1 if the person or firm actually
34 performing the design services on behalf of the contractor is appropriately
35 registered.~~

36 ~~2. The contractor for construction manager at risk, design build or
37 job order contracting construction services shall be licensed to perform
38 construction pursuant to title 32, chapter 10.~~

39 ~~3. For each project for horizontal construction under a design build
40 or construction manager at risk construction services contract, the licensed
41 contractor performing the contract shall perform, with the contractor's own
42 organization, construction work that amounts to not less than forty five per
43 cent of the total contract price for construction. For the purposes of this
44 paragraph, the total contract price for construction does not include the
45 cost of preconstruction services, design services or any other related~~

1 ~~services or the cost to procure any right of way or other cost of~~
2 ~~condemnation.~~

3 ~~4. There shall be a separate request for qualifications under~~
4 ~~subsection C of this section for each contract for horizontal construction~~
5 ~~construction manager at risk construction services or horizontal construction~~
6 ~~design build construction services.~~

7 ~~J. For job order contracting construction services only:~~

8 ~~1. The maximum dollar amount of an individual job order shall be one~~
9 ~~million dollars or such higher or lower amount prescribed by the agent in an~~
10 ~~action noticed pursuant to title 38, chapter 3, article 3.1 or a rule adopted~~
11 ~~by the agent as the maximum amount of an individual job order. Requirements~~
12 ~~shall not be artificially divided or fragmented in order to constitute a job~~
13 ~~order that satisfies this requirement.~~

14 ~~2. If the contractor subcontracts or intends to subcontract part or~~
15 ~~all of the work under a job order and if the job order construction services~~
16 ~~contract includes descriptions of standard individual tasks, standard unit~~
17 ~~prices for standard individual tasks and pricing of job orders based on the~~
18 ~~number of units of standard individual tasks in the job order:~~

19 ~~(a) The contractor has a duty to deliver promptly to each~~
20 ~~subcontractor invited to bid a coefficient to the contractor to do all or~~
21 ~~part of the work under one or more job orders:~~

22 ~~(i) A copy of the descriptions of all standard individual tasks on~~
23 ~~which the subcontractor is invited to bid.~~

24 ~~(ii) A copy of the standard unit prices for the individual tasks on~~
25 ~~which the subcontractor is invited to bid.~~

26 ~~(b) If not previously delivered to the subcontractor, the contractor~~
27 ~~has a duty to deliver promptly the following to each subcontractor invited to~~
28 ~~or that has agreed to do any of the work included in any job order:~~

29 ~~(i) A copy of the description of each standard individual task that is~~
30 ~~included in the job order and that the subcontractor is invited to perform.~~

31 ~~(ii) The number of units of each standard individual task that is~~
32 ~~included in the job order and that the subcontractor is invited to perform.~~

33 ~~(iii) The standard unit price for each standard individual task that~~
34 ~~is included in the job order and that the subcontractor is invited to~~
35 ~~perform.~~

36 ~~K. Notwithstanding anything to the contrary in this chapter, an agent~~
37 ~~shall not procure any horizontal construction using the~~
38 ~~construction manager at risk, design build or job order contracting method of~~
39 ~~project delivery after June 30, 2010. For purposes of this paragraph, an~~
40 ~~agent procures horizontal construction when the contract for the construction~~
41 ~~services is executed by the agent and the contractor for the~~
42 ~~construction manager at risk, design build or job order contracting~~
43 ~~construction services. If a contract is executed for construction services~~
44 ~~on or before June 30, 2010, construction services under the contract may be~~
45 ~~rendered in whole or in part after June 30, 2010.~~

1 ~~L. Notwithstanding anything to the contrary in this section or this~~
2 ~~title, an agent shall not:~~

3 ~~1. Enter into a contract as contractor to provide~~
4 ~~construction manager at risk construction services, design build construction~~
5 ~~services or job order contracting construction services.~~

6 ~~2. Contract with itself, with another agent, with this state or with~~
7 ~~any other governmental unit of this state or the federal government for the~~
8 ~~agent to provide construction manager at risk construction services,~~
9 ~~design build construction services or job order contracting construction~~
10 ~~services.~~

11 ~~M. The prohibitions prescribed in subsection L of this section do not~~
12 ~~prohibit an agent from providing construction for itself as provided by law.~~

13 ~~N. The agent shall include in each contract for construction services~~
14 ~~the full street or physical address of each separate location at which the~~
15 ~~construction will be performed and a requirement that the contractor and each~~
16 ~~subcontractor at any level include in each of its subcontracts the same~~
17 ~~address information. The contractor and each subcontractor at any level~~
18 ~~shall include in each subcontract the full street or physical address of each~~
19 ~~separate location at which construction work will be performed.~~

20 J. IF THE AGENT DOES NOT HAVE A PROCUREMENT PROTEST POLICY AND
21 PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE AGENT, FOR
22 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION THE AGENT SHALL FOLLOW
23 THE PROCUREMENT PROTEST POLICY AND PROCEDURES OF THE DEPARTMENT OF
24 ADMINISTRATION. THE AGENT SHALL PROCESS ALL PROTESTS RELATING TO
25 PROCUREMENTS UNDER THIS SECTION.

26 ~~0.~~ K. For the purposes of this section, "professional services"
27 includes architect services, engineer services, landscape architect services,
28 assayer services, geologist services and land surveying services and any
29 combination of those services.

30 Sec. 11. Renumber

31 Sections 34-604, 34-605, 34-606, 34-607, 34-608, 34-609, 34-610 and
32 34-611, Arizona Revised Statutes, are renumbered as sections 34-606, 34-607,
33 34-608, 34-609, 34-610, 34-611, 34-612 and 34-613, respectively.

34 Sec. 12. Title 34, chapter 6, article 1, Arizona Revised Statutes, is
35 amended by adding new sections 34-604 and 34-605, to read:

36 34-604. Procurement of multiple contracts for certain
37 professional services and certain
38 job-order-contracting construction services;
39 definition

40 A. EXCEPT FOR MULTIPLE CONTRACTS AN AGENT PROCURES PURSUANT TO SECTION
41 34-103, SECTION 34-606 OR THIS SECTION, AN AGENT SHALL NOT PROCURE IN A
42 SINGLE PROCUREMENT MULTIPLE CONTRACTS FOR CONSTRUCTION SERVICES OR
43 PROFESSIONAL SERVICES. IN A PROCUREMENT UNDER THIS SECTION, THERE IS A
44 SINGLE PROCUREMENT PROCESS FOR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE
45 PROCUREMENT. AN AGENT MAY PROCURE UNDER THIS SECTION:

1 1. MULTIPLE CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION
2 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS.

3 2. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO
4 SEPARATE PERSONS OR FIRMS OR TO BE AWARDED TO A SINGLE PERSON OR FIRM AS
5 SPECIFIED IN THE REQUEST FOR QUALIFICATIONS.

6 B. AN AGENT SHALL PROVIDE NOTICE OF EACH PROCUREMENT UNDER THIS
7 SECTION AND SHALL AWARD CONTRACTS ON THE BASIS OF DEMONSTRATED COMPETENCE AND
8 QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES
9 PURSUANT TO THE PROCEDURES PRESCRIBED IN THIS SECTION.

10 C. IN A PROCUREMENT PURSUANT TO THIS SECTION:

11 1. THE FOLLOWING REQUIREMENTS APPLY:

12 (a) THE AGENT AND THE SELECTION COMMITTEE SHALL NOT REQUEST OR
13 CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN
14 THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION D OF THIS
15 SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE INTERVIEWED, THE
16 SELECTION OF PERSONS OR FIRMS TO BE ON A FINAL LIST, IN DETERMINING THE ORDER
17 OF PREFERENCE OF PERSONS OR FIRMS ON A FINAL LIST OR FOR ANY OTHER PURPOSE IN
18 THE SELECTION PROCESS.

19 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
20 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON A FINAL LIST AND
21 THEIR ORDER ON A FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND SHALL
22 CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE AGENT
23 FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER FACTORS OR
24 CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER ACTIONS.

25 (c) IF THE AGENT ENTERS INTO THE NUMBER OF MULTIPLE CONTRACTS BEING
26 PROCURED FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR PROFESSIONAL
27 SERVICES, A PROCUREMENT UNDER THIS SECTION ENDS. AFTER THAT TIME THE AGENT
28 MAY NOT USE THE PROCUREMENT OR ANY EXISTING FINAL LIST IN THE PROCUREMENT AS
29 THE BASIS FOR ENTERING INTO A REPLACEMENT CONTRACT WITH ANY OTHER PERSON OR
30 FIRM THAT PARTICIPATED IN THE PROCUREMENT.

31 (d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
32 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
33 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

34 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
35 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
36 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
37 PROCUREMENT, THE AGENT MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
38 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
39 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE AGENT MAY
40 ELECT TO TERMINATE THE PROCUREMENT.

41 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
42 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO
43 SUBSECTION E OF THIS SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE
44 PERSON OR FIRM RESPONDS TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE
45 PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND

1 RESPONSIBLE PERSON OR FIRM REMAINS IN THE PROCUREMENT, THE AGENT MAY ELECT TO
2 PROCEED WITH THE PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE AGENT
3 DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF
4 THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS
5 OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME
6 FOR A RESOLICITATION.

7 (iii) IF A PERSON OR FIRM ON A FINAL LIST WITHDRAWS OR IS REMOVED FROM
8 THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE BEST
9 INTEREST OF THE AGENT, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON OR
10 FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
11 QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION
12 COMMITTEE AS THE NEXT MOST QUALIFIED.

13 2. AN AGENT SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR EACH
14 PROCUREMENT AND PUBLISH NOTICE OF THE REQUEST FOR QUALIFICATIONS. THIS
15 NOTICE SHALL BE PUBLISHED BY ADVERTISING IN A NEWSPAPER OF GENERAL
16 CIRCULATION IN THE COUNTY IN WHICH THE AGENT IS LOCATED FOR TWO CONSECUTIVE
17 PUBLICATIONS IF IT IS A WEEKLY NEWSPAPER OR FOR TWO PUBLICATIONS THAT ARE AT
18 LEAST SIX BUT NO MORE THAN TEN DAYS APART IF IT IS A DAILY NEWSPAPER. THE
19 PUBLICATION SHALL INCLUDE THE FACT THAT MULTIPLE CONTRACTS MAY OR WILL BE
20 AWARDED, SHALL STATE THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND
21 SHALL DESCRIBE THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
22 CONSTRUCTION SERVICES TO BE PERFORMED UNDER EACH CONTRACT. THE REQUEST FOR
23 QUALIFICATIONS SHALL:

24 (a) STATE THE FOLLOWING INFORMATION ABOUT THE CONTRACTS THAT MAY OR
25 WILL BE AWARDED:

26 (i) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
27 THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO
28 SEPARATE PERSONS OR FIRMS, THAT MULTIPLE CONTRACTS FOR THE SAME
29 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES MAY OR WILL BE AWARDED, THE
30 NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED, THE SERVICES TO BE PERFORMED
31 UNDER EACH OF THE MULTIPLE CONTRACTS AND THAT EACH OF THE MULTIPLE CONTRACTS
32 WILL BE AWARDED TO A SEPARATE PERSON OR FIRM.

33 (ii) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
34 PROFESSIONAL SERVICES, THAT MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES MAY
35 OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED, THE
36 SERVICES TO BE PERFORMED UNDER EACH OF THE MULTIPLE CONTRACTS AND EITHER THAT
37 EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO A SEPARATE PERSON OR FIRM
38 OR THAT ALL OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO THE SAME PERSON OR
39 FIRM.

40 (b) STATE AS TO FINAL LISTS:

41 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
42 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THAT THERE WILL BE A SINGLE FINAL
43 LIST OF THREE PERSONS OR FIRMS.

44 (ii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR THE SAME
45 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS

1 OR FIRMS, THAT THERE WILL BE A SINGLE FINAL LIST AND THE NUMBER OF PERSONS OR
2 FIRMS ON THE FINAL LIST, WHICH SHALL BE THE SUM OF THE NUMBER OF CONTRACTS
3 THAT MAY OR WILL BE AWARDED AND A NUMBER THAT IS DETERMINED BY THE AGENT AND
4 THAT IS NOT MORE THAN FIVE.

5 (iii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR PROFESSIONAL
6 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE WILL BE A
7 SEPARATE FINAL LIST FOR EACH CONTRACT AND THAT THE NUMBER OF PERSONS OR FIRMS
8 ON EACH FINAL LIST WILL BE THREE.

9 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
10 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
11 EXCEPT THAT IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
12 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS ONE OF THE
13 CRITERIA SHALL BE THE PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR
14 PROCEDURES TO IMPLEMENT THE AGENT'S SUBCONTRACTOR SELECTION PLAN:

15 (i) IF INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
16 STATE THE SELECTION CRITERIA AND THE RELATIVE WEIGHT OF THE SELECTION
17 CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND
18 THE REQUEST FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE
19 WEIGHT OF THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS
20 ON EACH FINAL LIST AND IN DETERMINING THEIR ORDER ON EACH FINAL LIST. THE
21 FINAL LIST SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE
22 SELECTION CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR
23 FIRMS TO BE INTERVIEWED.

24 (ii) IF INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS
25 SHALL STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
26 CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON EACH FINAL LIST AND
27 IN DETERMINING THEIR ORDER ON EACH FINAL LIST.

28 (d) IF THE AGENT WILL HOLD INTERVIEWS AS PART OF THE SELECTION
29 PROCESS:

30 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
31 TO BE AWARDED TO THE SAME PERSON OR FIRM, STATE THAT INTERVIEWS WILL BE HELD
32 AND THAT THE INTERVIEWS WILL BE WITH AT LEAST THREE BUT NOT MORE THAN FIVE
33 PERSONS OR FIRMS.

34 (ii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR THE SAME
35 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
36 OR FIRMS OR IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
37 TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT INTERVIEWS WILL BE
38 HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED NUMBER OF PERSONS OR
39 FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE REQUEST FOR
40 QUALIFICATIONS, SHALL BE DETERMINED BY THE AGENT, AND SHALL BE THE SUM OF THE
41 NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A NUMBER THAT IS
42 DETERMINED BY THE AGENT AND THAT IS NOT MORE THAN FIVE.

43 (e) FOR PROCUREMENTS OF MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
44 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, INCLUDE
45 EITHER:

1 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
2 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
3 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
4 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
5 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

6 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE AGENT THAT APPLIES
7 TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE JOB-ORDER-CONTRACTING
8 CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED
9 ON QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
10 NOT BASED ON PRICE ALONE AND A REQUIREMENT THAT EACH PERSON OR FIRM MUST
11 SUBMIT A DESCRIPTION OF THE PROCEDURES IT PROPOSES TO USE TO IMPLEMENT THE
12 AGENT'S SUBCONTRACTOR SELECTION PLAN.

13 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
14 AGENT'S PROTEST POLICY AND PROCEDURES OR, IF THE AGENT DOES NOT HAVE A
15 PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE PROTEST POLICY AND
16 PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION APPLY TO ANY PROTESTS
17 IN CONNECTION WITH THE PROCUREMENT.

18 3. AN AGENT SHALL INITIATE AN APPROPRIATELY QUALIFIED SELECTION
19 COMMITTEE FOR EACH REQUEST FOR QUALIFICATIONS. THE AGENT SHALL ENSURE THAT
20 THE SELECTION COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION
21 COMMITTEE. THE SAME SELECTION COMMITTEE SHALL FUNCTION AS TO ALL OF THE
22 MULTIPLE CONTRACTS INCLUDED IN THE PROCUREMENT. IF THE AGENT IS PROCURING
23 MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES, THE AGENT SHALL DETERMINE THE
24 NUMBER AND QUALIFICATIONS OF THE SELECTION COMMITTEE MEMBERS. A SELECTION
25 COMMITTEE FOR THE PROCUREMENT OF MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
26 CONSTRUCTION SERVICES SHALL HAVE NOT MORE THAN SEVEN MEMBERS, EXCEPT THAT IF
27 THE CONTRACT INVOLVES THE AGENT AND ADDITIONAL GOVERNMENTAL OR PRIVATE
28 PARTICIPANTS, THE NUMBER OF MEMBERS OF THE SELECTION COMMITTEE SHALL BE
29 INCREASED BY ONE FOR EACH ADDITIONAL PARTICIPANT, EXCEPT THAT THE MAXIMUM
30 NUMBER OF MEMBERS OF THE SELECTION COMMITTEE IS NINE. THE SELECTION
31 COMMITTEE FOR MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION
32 SERVICES SHALL INCLUDE AT LEAST ONE PERSON WHO IS A SENIOR MANAGEMENT
33 EMPLOYEE OF A LICENSED CONTRACTOR AND ONE PERSON WHO IS AN ARCHITECT OR
34 ENGINEER REGISTERED PURSUANT TO SECTION 32-121. THESE MEMBERS MAY BE
35 EMPLOYEES OF THE AGENT OR OUTSIDE CONSULTANTS. OUTSIDE CONTRACTORS,
36 ARCHITECTS AND ENGINEERS SERVING ON A SELECTION COMMITTEE SHALL NOT RECEIVE
37 COMPENSATION FROM THE AGENT FOR PERFORMING THIS SERVICE, BUT THE AGENT MAY
38 ELECT TO REIMBURSE OUTSIDE CONTRACTORS, ARCHITECTS AND ENGINEERS FOR TRAVEL,
39 LODGING AND OTHER EXPENSES INCURRED IN CONNECTION WITH SERVICE ON A SELECTION
40 COMMITTEE. A PERSON WHO IS A MEMBER OF A SELECTION COMMITTEE SHALL NOT BE A
41 CONTRACTOR UNDER A CONTRACT AWARDED UNDER THE PROCUREMENT OR PROVIDE ANY
42 PROFESSIONAL SERVICES, CONSTRUCTION, CONSTRUCTION SERVICES, MATERIALS OR
43 OTHER SERVICES UNDER THE CONTRACT. THE SELECTION COMMITTEE AND THE AGENT
44 SHALL DO THE FOLLOWING:

- 1 (a) IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR QUALIFICATIONS:
2 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSONS OR FIRMS TO BE
3 INTERVIEWED BY EVALUATING THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE
4 DATA THAT ARE SUBMITTED IN RESPONSE TO THE AGENT'S REQUEST FOR QUALIFICATIONS
5 BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
6 CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO DETERMINE THE
7 PERSONS OR FIRMS TO BE INTERVIEWED.
8 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
9 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
10 ON A FINAL LIST AND TO DETERMINE THEIR ORDER ON A FINAL LIST ARE NOT INCLUDED
11 IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD THE AGENT
12 SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE INTERVIEWED THE SELECTION
13 CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO BE USED TO SELECT
14 THE PERSONS OR FIRMS ON EACH FINAL LIST AND TO DETERMINE THEIR ORDER ON EACH
15 FINAL LIST. THESE SELECTION CRITERIA AND RELATIVE WEIGHT MAY BE DIFFERENT
16 THAN THE SELECTION CRITERIA AND RELATIVE WEIGHT USED TO DETERMINE THE PERSONS
17 OR FIRMS TO BE INTERVIEWED.
18 (iii) THE SELECTION COMMITTEE SHALL CONDUCT INTERVIEWS WITH THE NUMBER
19 OF PERSONS OR FIRMS TO BE INTERVIEWED AS STATED IN THE REQUEST FOR
20 QUALIFICATIONS REGARDING THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
21 CONSTRUCTION SERVICES AND THE RELATIVE METHODS OF APPROACH FOR FURNISHING THE
22 REQUIRED PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION
23 SERVICES.
24 (b) BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
25 SELECTION CRITERIA SPECIFIED AS PROVIDED IN THIS SECTION FOR SELECTION OF THE
26 PERSONS OR FIRMS ON EACH FINAL LIST AND THEIR ORDER ON EACH FINAL LIST, THE
27 SELECTION COMMITTEE SHALL SELECT THE PERSONS OR FIRMS FOR EACH FINAL LIST AND
28 IN THE CASE OF A FINAL LIST OR FINAL LISTS FOR MULTIPLE CONTRACTS THAT WILL
29 BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, RANK THE PERSONS OR FIRMS
30 ON EACH FINAL LIST IN ORDER OF PREFERENCE. IF THE PROCUREMENT IS FOR
31 MULTIPLE CONTRACTS TO BE AWARDED TO SEPARATE PERSONS OR FIRMS AND IF A PERSON
32 OR FIRM SUBMITTED QUALIFICATIONS FOR MORE THAN ONE CONTRACT, THE PERSON OR
33 FIRM MAY BE ON MORE THAN ONE FINAL LIST.
34 (c) BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE HIGHEST
35 RANKING PERSON OR FIRM ON EACH FINAL LIST THAT IT IS THE HIGHEST RANKING
36 PERSON OR FIRM ON THAT FINAL LIST, THE AGENT SHALL NOTIFY EACH OF THE
37 FOLLOWING THAT IT IS NOT THE HIGHEST PERSON OR FIRM ON THAT FINAL LIST OR
38 THAT ANOTHER PERSON OR FIRM IS THE HIGHEST RANKING PERSON OR FIRM ON THAT
39 FINAL LIST:
40 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED
41 FOR THAT FINAL LIST.
42 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
43 MADE SUBMITTALS FOR THAT FINAL LIST.
44 (d) FOR EACH FINAL LIST THE SELECTION COMMITTEE SHALL COMPLETE A
45 CONSOLIDATED SCORING SHEET SHOWING ALL PERSONS OR FIRMS THAT WERE INTERVIEWED

1 OR, IF NO INTERVIEWS WERE HELD, SHOWING ALL PERSONS OR FIRMS THAT SUBMITTED
2 QUALIFICATIONS, SHOWING THE FINAL RANK OR SCORE FOR EACH SUCH PERSON OR FIRM
3 AS TO EACH SELECTION CRITERIA, SHOWING THE FINAL OVERALL RANK OR SCORE FOR
4 EACH SUCH PERSON OR FIRM AND PRESCRIBING THE CRITERIA AND RELATIVE WEIGHT OF
5 THE CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND THEIR
6 ORDER ON THE FINAL LIST

7 D. AN AGENT SHALL AWARD MULTIPLE CONTRACTS SPECIFIED IN THE REQUEST
8 FOR QUALIFICATIONS AS PROVIDED IN SUBSECTION E OR F OF THIS SECTION.

9 E. THE AGENT SHALL CONDUCT NEGOTIATIONS WITH PERSONS OR FIRMS ON THE
10 FINAL LIST OR FINAL LISTS. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF
11 COMPENSATION AND OTHER CONTRACT TERMS THAT THE AGENT DETERMINES TO BE FAIR
12 AND REASONABLE TO THE AGENT. IN MAKING THIS DECISION, THE AGENT SHALL TAKE
13 INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF
14 THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO
15 BE RENDERED. IF IN A PROCUREMENT UNDER THIS SECTION THE AGENT TERMINATES
16 NEGOTIATIONS WITH A PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS
17 WITH ANOTHER PERSON OR FIRM ON THAT FINAL LIST, THE AGENT SHALL NOT IN THAT
18 PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A CONTRACT FOR THE
19 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES COVERED
20 BY THAT FINAL LIST WITH ANY PERSON OR FIRM ON THAT FINAL LIST WITH WHOM THE
21 AGENT HAS TERMINATED NEGOTIATIONS. IF THE PROCUREMENT IS FOR MULTIPLE
22 CONTRACTS FOR:

23 1. PROFESSIONAL SERVICES TO BE AWARDED TO A SINGLE PERSON OR FIRM,
24 THERE IS ONE FINAL LIST AND THE AGENT SHALL ENTER INTO NEGOTIATIONS WITH THE
25 HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL LIST. IF THE AGENT IS NOT ABLE
26 TO NEGOTIATE A SATISFACTORY CONTRACT WITH THE HIGHEST QUALIFIED PERSON OR
27 FIRM ON THE FINAL LIST, AT COMPENSATION AND ON OTHER CONTRACT TERMS THE AGENT
28 DETERMINES TO BE FAIR AND REASONABLE, THE AGENT SHALL THEN UNDERTAKE
29 NEGOTIATIONS WITH THE NEXT MOST QUALIFIED PERSON OR FIRM ON THE FINAL LIST IN
30 SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO REJECT
31 ALL PERSONS OR FIRMS ON THE FINAL LIST.

32 2. THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED
33 TO SEPARATE PERSONS OR FIRMS, THERE IS ONE FINAL LIST AND THE AGENT SHALL
34 ENTER INTO SEPARATE NEGOTIATIONS FOR CONTRACTS WITH THE NUMBER OF THE HIGHEST
35 QUALIFIED PERSONS OR FIRMS ON THE FINAL LIST EQUAL TO THE NUMBER OF CONTRACTS
36 TO BE AWARDED. IF THE AGENT IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT
37 WITH A PERSON OR FIRM WITH WHOM THE AGENT HAS COMMENCED NEGOTIATIONS, THE
38 AGENT SHALL FORMALLY TERMINATE NEGOTIATIONS WITH THAT PERSON OR FIRM. THE
39 AGENT SHALL THEN UNDERTAKE NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST
40 QUALIFIED PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE AGENT IS NOT THEN
41 NEGOTIATING AND WITH WHOM THE AGENT HAS NOT PREVIOUSLY NEGOTIATED IN SEQUENCE
42 UNTIL AN AGREEMENT IS REACHED FOR SOME OR ALL OF THE MULTIPLE CONTRACTS
43 INCLUDED IN THE REQUEST FOR QUALIFICATIONS OR A DETERMINATION IS MADE TO
44 REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

1 3. PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS,
2 THERE IS A SEPARATE FINAL LIST FOR EACH CONTRACT AND THE AGENT SHALL ENTER
3 INTO SEPARATE NEGOTIATIONS WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON EACH
4 FINAL LIST. IF THE AGENT IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT
5 WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON A FINAL LIST, AT COMPENSATION
6 AND ON OTHER CONTRACT TERMS THE AGENT DETERMINES TO BE FAIR AND REASONABLE,
7 THE AGENT SHALL FORMALLY TERMINATE NEGOTIATIONS WITH THAT PERSON OR FIRM.
8 THE AGENT SHALL THEN UNDERTAKE NEGOTIATIONS WITH THE NEXT MOST QUALIFIED
9 PERSON OR FIRM ON THAT FINAL LIST IN SEQUENCE UNTIL AN AGREEMENT IS REACHED
10 OR A DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON THAT FINAL LIST.

11 F. AS AN ALTERNATIVE TO SUBSECTION E OF THIS SECTION, AN AGENT MAY
12 AWARD MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO
13 BE AWARDED TO SEPARATE PERSONS OR FIRMS AS FOLLOWS:

14 1. THE AGENT SHALL USE THE SELECTION COMMITTEE APPOINTED FOR THE
15 REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

16 2. THE AGENT SHALL ISSUE A REQUEST FOR PROPOSALS TO THE PERSONS OR
17 FIRMS ON THE FINAL LIST DEVELOPED PURSUANT TO SUBSECTION C OF THIS SECTION.

18 3. THE REQUEST FOR PROPOSALS SHALL INCLUDE:

19 (a) THE AGENT'S PROJECT SCHEDULE AND PROJECT FINAL BUDGET FOR DESIGN
20 AND CONSTRUCTION OR LIFE CYCLE BUDGET FOR A PROCUREMENT THAT INCLUDES
21 MAINTENANCE SERVICES OR OPERATIONS SERVICES.

22 (b) A STATEMENT THAT THE CONTRACT OR CONTRACTS WILL BE AWARDED TO A
23 SPECIFIED NUMBER OF OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST NUMBER OF
24 POINTS UNDER A SCORING METHOD. THE SPECIFIED NUMBER OF OFFERORS WILL BE THE
25 NUMBER OF CONTRACTS INCLUDED IN THE PROCUREMENT.

26 (c) A DESCRIPTION OF THE SCORING METHOD, INCLUDING A LIST OF THE
27 FACTORS IN THE SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH
28 FACTOR. THE FACTORS IN THE SCORING METHOD SHALL INCLUDE:

29 (i) OFFEROR QUALIFICATIONS.

30 (ii) OFFEROR FINANCIAL CAPACITY.

31 (iii) COMPLIANCE WITH THE AGENT'S PROJECT SCHEDULE.

32 (iv) THE PRICE OR LIFE CYCLE PRICE FOR PROCUREMENTS THAT INCLUDE
33 MAINTENANCE SERVICES, OPERATIONS SERVICES OR FINANCE SERVICES.

34 (v) AN OFFEROR QUALITY MANAGEMENT PLAN.

35 (vi) OTHER EVALUATION FACTORS AS DETERMINED BY THE AGENT, IF ANY.

36 (d) A REQUIREMENT THAT EACH OFFEROR SUBMIT SEPARATELY A TECHNICAL
37 PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE
38 RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

39 (e) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION
40 COMMITTEE WILL SEPARATELY EVALUATE THE TECHNICAL PROPOSAL AND THE PRICE
41 PROPOSAL AND WILL EVALUATE AND SCORE THE TECHNICAL PROPOSAL BEFORE OPENING
42 THE PRICE PROPOSAL.

43 (f) IF THE AGENT CONDUCTS DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
44 SUBSECTION, A STATEMENT THAT DISCUSSIONS WILL BE HELD AND A REQUIREMENT THAT

1 EACH OFFEROR SUBMIT A PRELIMINARY TECHNICAL PROPOSAL BEFORE THE DISCUSSIONS
2 ARE HELD.

3 4. IF THE AGENT DETERMINES TO CONDUCT DISCUSSIONS PURSUANT TO
4 PARAGRAPH 5 OF THIS SUBSECTION, EACH OFFEROR SHALL SUBMIT A PRELIMINARY
5 TECHNICAL PROPOSAL TO THE AGENT BEFORE THOSE DISCUSSIONS ARE HELD.

6 5. IF DETERMINED BY THE AGENT AND INCLUDED BY THE AGENT IN THE REQUEST
7 FOR PROPOSALS, THE SELECTION COMMITTEE SHALL CONDUCT DISCUSSIONS WITH ALL
8 PERSONS OR FIRMS THAT SUBMIT PRELIMINARY TECHNICAL PROPOSALS. DISCUSSIONS
9 SHALL BE FOR THE PURPOSE OF CLARIFICATION TO ENSURE FULL UNDERSTANDING OF,
10 AND RESPONSIVENESS TO, THE SOLICITATION REQUIREMENTS. OFFERORS SHALL BE
11 ACCORDED FAIR TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR DISCUSSION AND
12 FOR CLARIFICATION BY THE OWNER. REVISION OF PRELIMINARY TECHNICAL PROPOSALS
13 SHALL BE PERMITTED AFTER SUBMISSION OF PRELIMINARY TECHNICAL PROPOSALS AND
14 BEFORE AWARD FOR THE PURPOSE OF OBTAINING BEST AND FINAL PROPOSALS. IN
15 CONDUCTING ANY DISCUSSIONS, INFORMATION DERIVED FROM PROPOSALS SUBMITTED BY
16 COMPETING OFFERORS SHALL NOT BE DISCLOSED TO OTHER COMPETING OFFERORS.

17 6. AFTER COMPLETION OF ANY DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
18 SUBSECTION OR IF NO DISCUSSIONS ARE HELD, EACH OFFEROR SHALL SUBMIT
19 SEPARATELY THE OFFEROR'S FINAL TECHNICAL PROPOSAL AND ITS PRICE PROPOSAL.

20 7. BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION COMMITTEE SHALL
21 OPEN THE FINAL TECHNICAL PROPOSALS, EVALUATE THE FINAL TECHNICAL PROPOSALS
22 AND SCORE THE FINAL TECHNICAL PROPOSALS USING THE SCORING METHOD IN THE
23 REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE
24 EVALUATION AND SCORING.

25 8. AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
26 TECHNICAL PROPOSALS, THE SELECTION COMMITTEE SHALL OPEN THE PRICE PROPOSALS,
27 EVALUATE THE PRICE PROPOSALS, SCORE THE PRICE PROPOSALS AND COMPLETE THE
28 SCORING OF THE ENTIRE PROPOSALS USING THE SCORING METHOD IN THE REQUEST FOR
29 PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND
30 SCORING. THE SELECTION COMMITTEE SHALL COMPLETE A CONSOLIDATED SCORING SHEET
31 SHOWING FOR EACH PERSON OR FIRM THAT SUBMITTED A PROPOSAL ITS FINAL SCORE FOR
32 EACH FACTOR IN THE SCORING METHOD INCLUDED IN THE REQUEST FOR PROPOSALS AND
33 ITS FINAL OVERALL SCORE. THE CONSOLIDATED SCORING SHEET SHALL ALSO INCLUDE
34 THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE SCORING
35 METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS INCLUDED IN
36 THE REQUEST FOR PROPOSALS.

37 9. THE AGENT SHALL AWARD THE CONTRACTS TO THE NUMBER RESPONSIVE AND
38 RESPONSIBLE OFFERORS SPECIFIED IN THE REQUEST FOR PROPOSALS WHOSE PROPOSALS
39 RECEIVE THE HIGHEST SCORES UNDER THE METHOD OF SCORING IN THE REQUEST FOR
40 PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION.
41 BEFORE OR AT THE SAME TIME AS THE AGENT NOTIFIES THE WINNING OFFEROR THAT IT
42 HAS WON, THE AGENT SHALL NOTIFY EACH OTHER OFFEROR EITHER THAT THE OFFEROR
43 HAS NOT WON OR THAT ANOTHER OFFEROR HAS WON.

1 10. THE CONTRACT OR CONTRACTS FILE SHALL CONTAIN THE BASIS ON WHICH THE
2 AWARD IS MADE, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED
3 UNDER SUBSECTION G OF THIS SECTION.

4 G. IF THE PROCUREMENT HAS MULTIPLE FINAL LISTS UNDER SUBSECTION C OF
5 THIS SECTION, THE AGENT SHALL RETAIN THE ITEMS IN PARAGRAPH 1 OF THIS
6 SUBSECTION AS TO EACH FINAL LIST. AT A MINIMUM, THE AGENT SHALL RETAIN THE
7 FOLLOWING FOR EACH PROCUREMENT UNDER THIS SECTION:

8 1. AS TO EACH FINAL LIST UNDER EACH REQUEST FOR QUALIFICATIONS
9 PROCUREMENT PROCESS UNDER SUBSECTION C OF THIS SECTION:

10 (a) IF INTERVIEWS WERE NOT HELD:

11 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
12 AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE AGENT ENTERS INTO A
13 CONTRACT.

14 (ii) THE FINAL LIST.

15 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
16 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
17 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

18 (iv) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
19 THAT SUBMITTED QUALIFICATIONS ITS SCORE OR RANK ON EACH SELECTION CRITERIA
20 AND ITS OVERALL SCORE OR RANK.

21 (b) IF INTERVIEWS WERE HELD:

22 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
23 LIST AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE AGENT ENTERS
24 INTO A CONTRACT.

25 (ii) THE FINAL LIST.

26 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
27 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
28 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

29 (iv) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
30 THAT WAS INTERVIEWED ITS SCORE OR RANK ON EACH SELECTION CRITERIA AND ITS
31 OVERALL SCORE OR RANK.

32 2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION
33 F OF THIS SECTION:

34 (a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED
35 THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND THE
36 ENTIRE PROPOSAL SUBMITTED BY EACH PERSON OR FIRM WITH WHICH THE AGENT ENTERS
37 INTO A CONTRACT.

38 (b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE
39 SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS
40 INCLUDED IN THE REQUEST FOR PROPOSALS.

41 (c) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
42 THAT SUBMITTED A PROPOSAL ITS FINAL SCORE FOR EACH FACTOR IN THE SCORING
43 METHOD INCLUDED IN THE REQUEST FOR PROPOSALS AND ITS FINAL OVERALL SCORE.

1 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
2 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

3 1. UNTIL CONTRACT AWARD BY AN AGENT OF ALL OF THE MULTIPLE CONTRACTS
4 IN THE PROCUREMENT OR TERMINATION OF THE PROCUREMENT BY THE AGENT, ONLY THE
5 NAME OF EACH PERSON OR FIRM ON THE FINAL LIST DEVELOPED PURSUANT TO
6 SUBSECTION C OF THIS SECTION MAY BE MADE AVAILABLE TO THE PUBLIC AND ALL
7 OTHER INFORMATION RECEIVED BY THE AGENT IN RESPONSE TO THE REQUEST FOR
8 QUALIFICATIONS UNDER SUBSECTION C OF THIS SECTION OR CONTAINED IN PROPOSALS
9 SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL BE CONFIDENTIAL IN ORDER
10 TO AVOID DISCLOSURE OF THE CONTENTS THAT MAY BE PREJUDICIAL TO COMPETING
11 SUBMITTERS AND OFFERORS DURING THE SELECTION PROCESS.

12 2. AFTER THE AGENT AWARDS ALL OF THE MULTIPLE CONTRACTS IN THE
13 PROCUREMENT OR TERMINATES THE PROCUREMENT, THE AGENT SHALL MAKE AVAILABLE TO
14 THE PUBLIC ALL OF THE ITEMS THAT THE AGENT IS REQUIRED TO RETAIN UNDER
15 SUBSECTION G OF THIS SECTION, EXCEPT THE PROPOSALS SUBMITTED IN RESPONSE TO A
16 REQUEST FOR PROPOSALS UNDER SUBSECTION F OF THIS SECTION.

17 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
18 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE AGENT HAS ENTERED INTO A
19 CONTRACT FOR ALL OF THE MULTIPLE CONTRACTS IN THE PROCUREMENT OR THE AGENT
20 HAS TERMINATED THE PROCUREMENT. THE PROPOSALS SUBMITTED UNDER SUBSECTION F
21 OF THIS SECTION THAT THE AGENT IS REQUIRED TO RETAIN UNDER SUBSECTION G OF
22 THIS SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC AFTER THE AGENT HAS
23 ENTERED INTO A CONTRACT FOR ALL OF THE CONTRACTS IN THE PROCUREMENT OR THE
24 AGENT HAS TERMINATED THE PROCUREMENT.

25 4. TO THE EXTENT THAT THE OFFEROR DESIGNATES AND THE AGENT CONCURS,
26 TRADE SECRETS AND OTHER PROPRIETARY DATA CONTAINED IN A PROPOSAL SHALL REMAIN
27 CONFIDENTIAL.

28 I. AN AGENT MAY CANCEL A REQUEST FOR QUALIFICATIONS OR A REQUEST FOR
29 PROPOSALS, REJECT IN WHOLE OR IN PART ANY OR ALL SUBMITTALS OR PROPOSALS, OR
30 DETERMINE NOT TO ENTER INTO ONE OR MORE OF THE MULTIPLE CONTRACTS AS
31 SPECIFIED IN THE SOLICITATION IF THE AGENT DETERMINES IN ITS ABSOLUTE AND
32 SOLE DISCRETION THAT SUCH ACTION IS IN THE BEST INTEREST OF THE AGENT. THE
33 AGENT SHALL MAKE THE REASONS FOR CANCELLATION, REJECTION OR DETERMINATION NOT
34 TO ENTER INTO CONTRACTS PART OF THE CONTRACT FILE.

35 J. IF THE AGENT DOES NOT HAVE A PROCUREMENT PROTEST POLICY AND
36 PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE AGENT, FOR
37 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION THE AGENT SHALL FOLLOW
38 THE PROCUREMENT PROTEST POLICY AND PROCEDURES OF THE DEPARTMENT OF
39 ADMINISTRATION. THE AGENT SHALL PROCESS ALL PROTESTS RELATING TO
40 PROCUREMENTS UNDER THIS SECTION.

41 K. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
42 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
43 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
44 OF THOSE SERVICES.

1 34-605. Requirements applicable to construction services and
2 professional services and to contracts for
3 construction services and professional services:
4 definition

5 A. THE REQUIREMENTS PRESCRIBED IN THIS SECTION APPLY TO EACH CONTRACT
6 ENTERED INTO AS THE RESULT OF A PROCUREMENT UNDER SECTION 34-603, 34-604 OR
7 34-606 AND TO THE PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES INCLUDED IN
8 EACH PROCUREMENT UNDER SECTION 34-603, 34-604 OR 34-606.

9 B. IF A PROCUREMENT UNDER SECTION 34-603 IS FOR
10 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
11 CONSTRUCTION SERVICES TO BE CONTRACTED PURSUANT TO SECTION 34-603, SUBSECTION
12 E OR IF A PROCUREMENT UNDER SECTION 34-606 IS FOR
13 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
14 CONSTRUCTION SERVICES, THE AGENT SHALL ENTER INTO A WRITTEN CONTRACT WITH THE
15 CONTRACTOR FOR PRECONSTRUCTION SERVICES UNDER WHICH THE AGENT SHALL PAY THE
16 CONTRACTOR A FEE FOR PRECONSTRUCTION SERVICES IN AN AMOUNT AGREED BY THE
17 AGENT AND THE CONTRACTOR, AND THE AGENT SHALL NOT REQUEST OR OBTAIN A FIXED
18 PRICE OR A GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION FROM THE CONTRACTOR
19 OR ENTER INTO A CONSTRUCTION CONTRACT WITH THE CONTRACTOR UNTIL AFTER THE
20 AGENT HAS ENTERED INTO THE WRITTEN CONTRACT FOR PRECONSTRUCTION SERVICES AND
21 A PRECONSTRUCTION SERVICES FEE.

22 C. IF A CONTRACT FOR CONSTRUCTION SERVICES IS ENTERED INTO AS THE
23 RESULT OF A PROCUREMENT UNDER SECTION 34-603, 34-604 OR 34-606, CONSTRUCTION
24 SHALL NOT COMMENCE UNTIL THE AGENT AND CONTRACTOR AGREE IN WRITING ON EITHER
25 A FIXED PRICE THAT THE AGENT WILL PAY FOR THE CONSTRUCTION TO BE COMMENCED OR
26 A GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION TO BE COMMENCED.

27 D. A CONTRACT FOR PROFESSIONAL SERVICES ENTERED INTO AS THE RESULT OF
28 A PROCUREMENT UNDER SECTION 34-603, 34-604 OR 34-606 SHALL HAVE A TERM NOT
29 EXCEEDING FIVE YEARS AFTER THE DATE OF CONTRACT AWARD BY THE AGENT OF THE
30 FIRST CONTRACT UNDER THE PROCUREMENT, EXCEPT THAT THE CONTRACT MAY CONTINUE
31 IN EFFECT AFTER THE FIVE YEAR TERM FOR PROFESSIONAL SERVICES ON PROJECTS ON
32 WHICH THE RENDERING OF PROFESSIONAL SERVICES COMMENCES WITHIN THE FIVE YEAR
33 TERM

34 E. NOTWITHSTANDING ANY OTHER LAW:

35 1. THE CONTRACTOR FOR DESIGN-BUILD OR JOB-ORDER-CONTRACTING
36 CONSTRUCTION SERVICES IS NOT REQUIRED TO BE REGISTERED TO PERFORM DESIGN
37 SERVICES PURSUANT TO TITLE 32, CHAPTER 1 IF THE PERSON OR FIRM ACTUALLY
38 PERFORMING THE DESIGN SERVICES ON BEHALF OF THE CONTRACTOR IS APPROPRIATELY
39 REGISTERED.

40 2. THE CONTRACTOR FOR CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR
41 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL BE LICENSED TO PERFORM
42 CONSTRUCTION PURSUANT TO TITLE 32, CHAPTER 10.

43 3. FOR EACH PROJECT FOR HORIZONTAL CONSTRUCTION UNDER A DESIGN-BUILD
44 OR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES CONTRACT, THE LICENSED
45 CONTRACTOR PERFORMING THE CONTRACT SHALL PERFORM, WITH THE CONTRACTOR'S OWN

1 ORGANIZATION, CONSTRUCTION WORK THAT AMOUNTS TO NOT LESS THAN FORTY-FIVE PER
2 CENT OF THE TOTAL CONTRACT PRICE FOR CONSTRUCTION. FOR THE PURPOSES OF THIS
3 PARAGRAPH, THE TOTAL CONTRACT PRICE FOR CONSTRUCTION DOES NOT INCLUDE THE
4 COST OF PRECONSTRUCTION SERVICES, DESIGN SERVICES OR ANY OTHER RELATED
5 SERVICES OR THE COST TO PROCURE ANY RIGHT-OF-WAY OR OTHER COST OF
6 CONDEMNATION.

7 F. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ONLY:

8 1. THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER SHALL BE ONE
9 MILLION DOLLARS OR SUCH HIGHER OR LOWER AMOUNT PRESCRIBED BY THE AGENT IN AN
10 ACTION NOTICED PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 3.1 OR A RULE ADOPTED
11 BY THE AGENT AS THE MAXIMUM AMOUNT OF AN INDIVIDUAL JOB ORDER. REQUIREMENTS
12 SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN ORDER TO CONSTITUTE A JOB
13 ORDER THAT SATISFIES THIS REQUIREMENT.

14 2. IF THE CONTRACTOR SUBCONTRACTS OR INTENDS TO SUBCONTRACT PART OR
15 ALL OF THE WORK UNDER A JOB ORDER AND IF THE JOB-ORDER-CONTRACTING
16 CONSTRUCTION SERVICES CONTRACT INCLUDES DESCRIPTIONS OF STANDARD INDIVIDUAL
17 TASKS, STANDARD UNIT PRICES FOR STANDARD INDIVIDUAL TASKS AND PRICING OF JOB
18 ORDERS BASED ON THE NUMBER OF UNITS OF STANDARD INDIVIDUAL TASKS IN THE JOB
19 ORDER:

20 (a) THE CONTRACTOR HAS A DUTY TO DELIVER PROMPTLY TO EACH
21 SUBCONTRACTOR INVITED TO BID A COEFFICIENT TO THE CONTRACTOR TO DO ALL OR
22 PART OF THE WORK UNDER ONE OR MORE JOB ORDERS:

23 (i) A COPY OF THE DESCRIPTIONS OF ALL STANDARD INDIVIDUAL TASKS ON
24 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

25 (ii) A COPY OF THE STANDARD UNIT PRICES FOR THE INDIVIDUAL TASKS ON
26 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

27 (b) IF NOT PREVIOUSLY DELIVERED TO THE SUBCONTRACTOR, THE CONTRACTOR
28 HAS A DUTY TO DELIVER PROMPTLY THE FOLLOWING TO EACH SUBCONTRACTOR INVITED TO
29 OR THAT HAS AGREED TO DO ANY OF THE WORK INCLUDED IN ANY JOB ORDER:

30 (i) A COPY OF THE DESCRIPTION OF EACH STANDARD INDIVIDUAL TASK THAT IS
31 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

32 (ii) THE NUMBER OF UNITS OF EACH STANDARD INDIVIDUAL TASK THAT IS
33 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

34 (iii) THE STANDARD UNIT PRICE FOR EACH STANDARD INDIVIDUAL TASK THAT
35 IS INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO
36 PERFORM.

37 G. NOTWITHSTANDING THIS CHAPTER, AN AGENT SHALL NOT PROCURE ANY
38 HORIZONTAL CONSTRUCTION USING THE CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD
39 OR JOB-ORDER-CONTRACTING METHOD OF PROJECT DELIVERY AFTER JUNE 30, 2015. FOR
40 PURPOSES OF THIS PARAGRAPH, AN AGENT PROCURES HORIZONTAL CONSTRUCTION WHEN
41 THE CONTRACT FOR THE CONSTRUCTION SERVICES IS EXECUTED BY THE AGENT AND THE
42 CONTRACTOR FOR THE CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR
43 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES. IF A CONTRACT IS EXECUTED FOR
44 CONSTRUCTION SERVICES ON OR BEFORE JUNE 30, 2015, CONSTRUCTION SERVICES UNDER
45 THE CONTRACT MAY BE RENDERED IN WHOLE OR IN PART AFTER JUNE 30, 2015.

1 H. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION OR THIS
2 TITLE, AN AGENT SHALL NOT:

3 1. ENTER INTO A CONTRACT AS CONTRACTOR TO PROVIDE
4 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION
5 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

6 2. CONTRACT WITH ITSELF, WITH ANOTHER AGENT, WITH THIS STATE OR WITH
7 ANY OTHER GOVERNMENTAL UNIT OF THIS STATE OR THE FEDERAL GOVERNMENT FOR THE
8 AGENT TO PROVIDE CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES,
9 DESIGN-BUILD CONSTRUCTION SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION
10 SERVICES.

11 I. THE PROHIBITIONS PRESCRIBED IN SUBSECTION H OF THIS SECTION DO NOT
12 PROHIBIT AN AGENT FROM PROVIDING CONSTRUCTION FOR ITSELF AS PROVIDED BY LAW.

13 J. THE AGENT SHALL INCLUDE IN EACH CONTRACT FOR CONSTRUCTION SERVICES
14 THE FULL STREET OR PHYSICAL ADDRESS OF EACH SEPARATE LOCATION AT WHICH THE
15 CONSTRUCTION WILL BE PERFORMED AND A REQUIREMENT THAT THE CONTRACTOR AND EACH
16 SUBCONTRACTOR AT ANY LEVEL INCLUDE IN EACH OF ITS SUBCONTRACTS THE SAME
17 ADDRESS INFORMATION. THE CONTRACTOR AND EACH SUBCONTRACTOR AT ANY LEVEL
18 SHALL INCLUDE IN EACH SUBCONTRACT THE FULL STREET OR PHYSICAL ADDRESS OF EACH
19 SEPARATE LOCATION AT WHICH CONSTRUCTION WORK WILL BE PERFORMED.

20 K. THE FOLLOWING PROVISIONS APPLY TO ALL CONSTRUCTION SERVICES
21 PROCURED UNDER THIS CHAPTER:

22 1. THE PERSON OR FIRM SELECTED TO PERFORM THE CONSTRUCTION SERVICES
23 SHALL SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION
24 OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS BASED ON
25 PRICE ALONE. A QUALIFICATIONS AND PRICE SELECTION MAY BE A SINGLE-STEP
26 SELECTION BASED ON A COMBINATION OF QUALIFICATIONS AND PRICE OR A TWO-STEP
27 SELECTION. IN A TWO-STEP SELECTION, THE FIRST STEP SHALL BE BASED ON
28 QUALIFICATIONS ALONE AND THE SECOND STEP MAY BE BASED ON A COMBINATION OF
29 QUALIFICATIONS AND PRICE OR ON PRICE ALONE.

30 2. THE AGENT SHALL INCLUDE IN EACH CONTRACT:

31 (a) IF THE AGENT INCLUDED ITS SUBCONTRACTOR SELECTION PLAN IN THE
32 REQUEST FOR QUALIFICATIONS, THE AGENT'S SUBCONTRACTOR SELECTION PLAN AND THE
33 PROCEDURES TO IMPLEMENT THE AGENT'S SUBCONTRACTOR SELECTION PLAN PROPOSED BY
34 THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS WITH THOSE
35 MODIFICATIONS TO THE PROCEDURES AS THE AGENT AND THE SELECTED PERSON OR FIRM
36 AGREE.

37 (b) IF THE AGENT DID NOT INCLUDE ITS SUBCONTRACTOR SELECTION PLAN IN
38 THE REQUEST FOR QUALIFICATIONS, THE SUBCONTRACTOR SELECTION PLAN PROPOSED BY
39 THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS WITH THOSE
40 MODIFICATIONS AS THE AGENT AND THE SELECTED PERSON OR FIRM AGREE.

41 3. IN MAKING THE SELECTION OF SUBCONTRACTORS, THE PERSON OR FIRM
42 SELECTED TO PERFORM THE CONSTRUCTION SERVICES SHALL USE THE SUBCONTRACTOR
43 SELECTION PLAN AND ANY PROCEDURES INCLUDED IN ITS CONTRACT.

44 L. IF THE AGENT DOES NOT HAVE A PROCUREMENT PROTEST POLICY AND
45 PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE AGENT, FOR

1 PROTESTS RELATING TO PROCUREMENTS UNDER THIS CHAPTER THE AGENT SHALL FOLLOW
2 THE PROCUREMENT PROTEST POLICY AND PROCEDURES OF THE DEPARTMENT OF
3 ADMINISTRATION. THE AGENT SHALL PROCESS ALL PROTESTS RELATING TO
4 PROCUREMENTS UNDER THIS SECTION.

5 M. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
6 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
7 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
8 OF THOSE SERVICES.

9 Sec. 13. Section 34-608, Arizona Revised Statutes, as renumbered by
10 this act, is amended to read:

11 34-608. Bid security for design-build and job-order-contracting
12 construction services

13 A. As a guarantee that the contractor will enter into a contract, bid
14 security is required for all design-build construction services and all
15 job-order-contracting construction services awarded by an agent by
16 competitive sealed proposals pursuant to section 34-603, subsection F OR
17 34-604, SUBSECTION F if the agent estimates that the budget for construction,
18 excluding the cost of any finance services, maintenance services, operations
19 services, design services, preconstruction services or other related
20 services, will be more than the amount prescribed in section 41-2535,
21 subsection D. Each proposal for design-build construction services or
22 job-order-contracting construction services shall be accompanied by a
23 certified check, cashier's check or surety bond. The bid security amount for
24 design-build construction services shall be an amount equal to ten per cent
25 of the agent's budget for construction, excluding any finance services,
26 maintenance services, operations services, design services, preconstruction
27 services or other related services, for the project as stated in the request
28 for proposals. The bid security amount for job-order-contracting
29 construction services shall be the amount determined by the agent and stated
30 in the request for proposals and shall not be more than ten per cent of the
31 agent's reasonably estimated budget for construction that the agent believes
32 is likely to actually be done during the first year of the
33 job-order-contracting contract, excluding any finance services, maintenance
34 services, operations services, design services, preconstruction services or
35 other related services that are included in the contract.

36 B. The agent shall return the certified check, cashier's check or
37 surety bond to the contractors whose proposals are not accepted and to the
38 successful contractor on the execution of satisfactory payment and
39 performance bonds, insurance and the contract as provided in this chapter.

40 C. Notwithstanding any other statute, the surety bond shall be
41 executed solely by a surety company or companies holding a certificate of
42 authority to transact surety business in this state issued by the director of
43 the department of insurance pursuant to title 20, chapter 2, article 1. The
44 bond shall not be executed by an individual surety or sureties, even if the
45 requirements of section 7-101 are satisfied.

1 D. The conditions and provisions of the surety bond regarding the
2 surety's obligations shall follow the following form:

3 Now, therefore, if the obligee accepts the proposal of the
4 principal and the principal enters into a contract with the
5 obligee in accordance with the terms of the proposal and gives
6 the bonds and certificates of insurance as specified in the
7 standard specifications with good and sufficient surety for the
8 faithful performance of the contract and for the prompt payment
9 of labor and materials furnished in the prosecution of the
10 contract, or in the event of the failure of the principal to
11 enter into the contract and give the bonds and certificates of
12 insurance, if the principal pays to the obligee the difference
13 not to exceed the penalty of the bond between the amount
14 specified in the proposal and any larger amount for which the
15 obligee may contract in good faith with another party to perform
16 the work covered by the proposal, this obligation is void.
17 Otherwise it remains in full force and effect. Provided,
18 however, that this bond is executed pursuant to section ~~34-606~~
19 34-608, Arizona Revised Statutes, and all liabilities on this
20 bond shall be determined in accordance with the provisions of
21 the section to the extent as if it were copied at length in this
22 agreement.

23 E. If the request for proposals requires security, noncompliance
24 requires that the agent reject the proposal for noncompliance with the
25 security requirement, unless the agent determines that the bid fails to
26 comply in a nonsubstantial manner with the security requirements.

27 F. After the agent opens the proposals, the proposals are irrevocable
28 for the period specified in the request for proposals, except as provided in
29 section 34-603, subsection F OR SECTION 34-604, SUBSECTION F. If a proposer
30 is permitted to withdraw its proposal before award, no action may be had
31 against the proposer or the bid security.

32 G. All bonds given by a contractor and surety pursuant to this
33 section, regardless of their actual form, are deemed by law to be the form
34 required and set forth in this section.

35 Sec. 14. Section 34-610, Arizona Revised Statutes, as renumbered by
36 this act, is amended to read:

37 34-610. Construction-manager-at-risk, design-build and
38 job-order-contracting construction services surety
39 bond required; suit on bond; limitations

40 A. Except if specifically exempted by statute, before an agent
41 executes any contract with any person or firm for
42 construction-manager-at-risk construction services, design-build construction
43 services or job-order-contracting construction services, the person or firm
44 shall furnish to the agent entering into the contract the following bonds,
45 except that the bonds shall be furnished only on and at the same time as

1 execution of a contract or an amendment to a contract that commits the
2 contractor to provide construction for a fixed price, a guaranteed maximum
3 price or any other fixed amount within a designated time frame:

4 1. A performance bond in an amount equal to the full contract amount
5 conditioned on the faithful performance of the contract in accordance with
6 plans, specifications and conditions of the contract, except that:

7 (a) For job-order-contracting construction services, the performance
8 bond shall cover the full amount of construction under the
9 job-order-contracting construction services contract, shall not include any
10 design services, preconstruction services, finance services, maintenance
11 services, operations services or other related services included in the
12 contract, may be a single bond for the full term of the contract, a separate
13 bond for each year of a multiyear contract or a separate bond for each job
14 order, as determined by the agent, and, if a single bond for the full term of
15 the contract or a separate bond for each year of a multiyear contract, shall
16 initially be based on the agent's reasonable estimate of the amount of
17 construction that the agent believes is likely to actually be done during the
18 full term of the contract or during the particular year of a multiyear
19 contract, as applicable.

20 (b) For construction-manager-at-risk construction services and
21 design-build construction services, the amount of the performance bond shall
22 be the price of construction and shall not include the cost of any design
23 services, preconstruction services, finance services, maintenance services,
24 operations services or any other related services included in the contract.
25 The performance bond shall be solely for the protection of the public body
26 awarding the contract.

27 2. A payment bond in an amount equal to the full contract amount
28 solely for the protection of claimants supplying labor or materials to the
29 contractor or the contractor's subcontractors in the prosecution of the
30 construction and not for the protection of persons providing any design
31 services, preconstruction services, finance services, maintenance services,
32 operations services or other related services provided for in the contract,
33 except that:

34 (a) For job-order-contracting construction services, the payment bond
35 shall cover the full amount of construction under the job-order-contracting
36 construction services contract, shall not include any design services,
37 preconstruction services, finance services, maintenance services, operations
38 services or other related services included in the contract, may be a single
39 bond for the full term of the contract, a separate bond for each year of a
40 multiyear contract or a separate bond for each job order, as determined by
41 the agent, and, if a single bond for the full term of the contract or a
42 separate bond for each year of a multiyear contract, shall initially be based
43 on the agent's reasonable estimate of the amount of construction that the
44 agent believes is likely to actually be done during the full term of the

1 contract or during the particular year of a multiyear contract, as
2 applicable.

3 (b) For construction-manager-at-risk construction services and
4 design-build construction services, the amount of the payment bond shall be
5 the price of construction and shall not include the cost of any design
6 services, preconstruction services, finance services, maintenance services,
7 operations services or any other related services included in the contract.

8 B. Each bond shall include a provision allowing the prevailing party
9 in a suit on the bond to recover as a part of the judgment any reasonable
10 attorney fees as may be fixed by the court.

11 C. Notwithstanding any other statute, each bond shall be executed
12 solely by a surety company or companies holding a certificate of authority to
13 transact surety business in this state issued by the director of the
14 department of insurance pursuant to title 20, chapter 2, article 1. The
15 bonds shall not be executed by an individual surety or sureties, even if the
16 requirements of section 7-101 are satisfied. The bonds shall be payable to
17 the public body concerned.

18 D. The bonds shall be filed in the office of the department, board,
19 commission, institution, agency or other contracting body awarding the
20 contract.

21 E. It is illegal for a request for qualifications or a request for
22 proposals pursuant to section 34-603 [OR 34-604](#), or any person acting or
23 purporting to act on behalf of the contracting body, to require that bonds be
24 furnished by a particular surety company, or through a particular agent or
25 broker.

26 F. The conditions and provisions in the payment bond regarding the
27 surety's obligations shall follow the following form:

28 Now, therefore, the condition of this obligation is that if the
29 principal promptly pays all monies due to all persons supplying
30 labor or materials to the principal or the principal's
31 subcontractors in the prosecution of the construction provided
32 for in the contract, this obligation is void. Otherwise it
33 remains in full force and effect. Provided, however, that this
34 bond is executed pursuant to title 34, chapter 6, Arizona
35 Revised Statutes, and all liabilities on this bond shall be
36 determined in accordance with the provisions, conditions and
37 limitations of title 34, chapter 6, Arizona Revised Statutes, to
38 the same extent as if they were copied at length in this
39 agreement. The prevailing party in a suit on this bond shall
40 recover as a part of the judgment reasonable attorney fees that
41 may be fixed by the court.

42 G. The conditions and provisions in the performance bond regarding the
43 surety's obligations shall follow the following form:

1 Now, therefore, the condition of this obligation is that if the
2 principal faithfully performs and fulfills all of the
3 undertakings, covenants, terms, conditions and agreements of the
4 contract during the original term of the contract and any
5 extension of the contract, with or without notice to the surety,
6 and during the life of any guaranty required under the contract,
7 and also performs and fulfills all of the undertakings,
8 covenants, terms, conditions and agreements of all duly
9 authorized modifications of the contract that may hereafter be
10 made, notice of which modifications to the surety being hereby
11 waived, the above obligation is void. Otherwise it remains in
12 full force and effect. Provided, however, that this bond is
13 executed pursuant to title 34, chapter 6, Arizona Revised
14 Statutes, and all liabilities on this bond shall be determined
15 in accordance with title 34, chapter 6, Arizona Revised
16 Statutes, to the extent as if it were copied at length in this
17 agreement. The prevailing party in a suit on this bond shall
18 recover as part of the judgment reasonable attorney fees that
19 may be fixed by the court. The performance under this bond is
20 limited to the construction to be performed under the contract
21 and does not include any design services, preconstruction
22 services, finance services, maintenance services, operations
23 services or any other related services included in the contract.

24 H. If the prime contract or specifications require any persons
25 supplying labor or materials in the prosecution of the work to furnish
26 payment or performance bonds, these bonds shall be executed solely by a
27 surety company or companies holding a certificate of authority to transact
28 surety business in this state issued by the director of the department of
29 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding any
30 other statute, the bonds shall not be executed by an individual surety or
31 sureties, even if the requirements of section 7-101 are satisfied.

32 I. All bonds given by a contractor and surety pursuant to this
33 section, regardless of their actual form, are deemed by law to be in the form
34 required and set forth in this section.

35 Sec. 15. Section 34-611, Arizona Revised Statutes, as renumbered by
36 this act, is amended to read:

37 34-611. Payment bonds for construction-manager-at-risk,
38 design-build and job-order-contracting construction
39 services

40 A. Every claimant who has furnished labor or material in the
41 prosecution of the construction provided for in a contract for
42 construction-manager-at-risk construction services, design-build construction
43 services and job-order-contracting construction services in respect of which
44 a payment bond is furnished under section ~~34-608~~ 34-610, and who has not been
45 paid in full before the expiration of ninety days after the day on which the

1 last of the labor was done or performed by the claimant or material was
2 furnished or supplied by the claimant for which the claim is made, shall have
3 the right to sue on the payment bond for the amount, or the balance, unpaid
4 at the time of institution of the suit and to prosecute the action to final
5 judgment for the sums justly due the claimant, and have execution thereon,
6 provided, however, that any claimant having a direct contractual
7 relationship with a subcontractor of the contractor furnishing the payment
8 bond but no contractual relationship express or implied with the contractor
9 shall have a right of action on the payment bond on giving the contractor
10 only a written preliminary twenty day notice, as provided for in section
11 33-992.01, subsection C, paragraphs 1, 2, 3 and 4 and subsections E and H,
12 and on giving written notice to the contractor within ninety days from the
13 date on which the claimant performed the last of the labor or furnished or
14 supplied the last of the material for which the claim is made, stating with
15 substantial accuracy the amount claimed and the name of the party to whom the
16 material was furnished or supplied or for whom the labor was done or
17 performed. The notice shall be served by registered or certified mail,
18 postage prepaid, in an envelope addressed to the contractor at any place the
19 contractor maintains an office or conducts business, or at the contractor's
20 residence.

21 B. Every suit instituted under this section shall be brought in the
22 name of the claimant, but no suit may be commenced after the expiration of
23 one year from the date on which the last of the labor was performed or
24 materials were supplied by the person bringing this suit.

25 C. The contracting body and the agent in charge of its office shall
26 furnish to anyone making written application therefor and who states that it
27 has supplied labor or materials for work, and payment therefor has not been
28 made, or that it is being sued on any bond, or that it is the surety on the
29 bond, a certified copy of the bond and the contract for which it was given,
30 which copy is prima facie evidence of the contents, execution and delivery of
31 the original. Applicants shall pay for these certified copies such
32 reasonable fees as the contracting body or the agent in charge of its office
33 fixes to cover the actual cost of preparation of the copies.

34 Sec. 16. Section 41-2503, Arizona Revised Statutes, is amended to
35 read:

36 41-2503. Definitions

37 In this chapter, unless the context otherwise requires:

38 1. "Architect services" means those professional architect services
39 that are within the scope of architectural practice as provided in title 32,
40 chapter 1.

41 2. "Business" means any corporation, partnership, individual, sole
42 proprietorship, joint stock company, joint venture or other private legal
43 entity.

1 3. "Change order" means a written order which is signed by a
2 procurement officer and which directs the contractor to make changes that the
3 changes clause of the contract authorizes the procurement officer to order.

4 4. "Construction":

5 (a) Means the process of building, altering, repairing, improving or
6 demolishing any public structure or building or other public improvements of
7 any kind to any public real property.

8 (b) Does not include:

9 (i) The routine operation, routine repair or routine maintenance of
10 existing facilities, structures, buildings or real property.

11 (ii) The investigation, characterization, restoration or remediation
12 due to an environmental issue of existing facilities, structures, buildings
13 or real property.

14 5. "Construction-manager-at-risk" means a project delivery method in
15 which:

16 (a) There is a separate contract for design services and a separate
17 contract for construction services.

18 (b) The contract for construction services may be entered into at the
19 same time as the contract for design services or at a later time.

20 (c) Design and construction of the project may be in sequential phases
21 or concurrent phases.

22 (d) Finance services, maintenance services, operations services,
23 preconstruction services and other related services may be included.

24 6. "Construction services" means either of the following for
25 construction-manager-at-risk, design-build and job-order-contracting project
26 delivery methods:

27 (a) Construction, excluding services, through the
28 construction-manager-at-risk or job-order-contracting project delivery
29 methods.

30 (b) A combination of construction and, as elected by the purchasing
31 agency, one or more related services, such as finance services, maintenance
32 services, operations services, design services and preconstruction services,
33 as those services are authorized in the definitions of
34 construction-manager-at-risk, design-build or job-order-contracting in this
35 section.

36 7. "Contract" means all types of state agreements, regardless of what
37 they may be called, for the procurement of materials, services or
38 construction or the disposal of materials.

39 8. "Contract modification" means any written alteration in the terms
40 and conditions of any contract accomplished by mutual action of the parties
41 to the contract.

42 9. "Contractor" means any person who has a contract with a state
43 governmental unit.

44 10. "Data" means documented information, regardless of form or
45 characteristic.

- 1 11. "Department" means the department of administration.
2 12. "Design-bid-build" means a project delivery method in which:
3 (a) There is a sequential award of two separate contracts.
4 (b) The first contract is for design services.
5 (c) The second contract is for construction.
6 (d) Design and construction of the project are in sequential phases.
7 (e) Finance services, maintenance services and operations services are
8 not included.
9 13. "Design-build" means a project delivery method in which:
10 (a) There is a single contract for design services and construction
11 services.
12 (b) Design and construction of the project may be in sequential phases
13 or concurrent phases.
14 (c) Finance services, maintenance services, operations services,
15 preconstruction services and other related services may be included.
16 14. "Design requirements":
17 (a) Means at a minimum the purchasing agency's written description of
18 the project or service to be procured, including:
19 (i) The required features, functions, characteristics, qualities and
20 properties.
21 (ii) The anticipated schedule, including start, duration and
22 completion.
23 (iii) The estimated budgets applicable to the specific procurement for
24 design and construction and, if applicable, for operation and maintenance.
25 (b) May include:
26 (i) Drawings and other documents illustrating the scale and
27 relationship of the features, functions and characteristics of the project,
28 which shall all be prepared by an architect or engineer, as appropriate, who
29 is registered pursuant to section 32-121.
30 (ii) Additional design information or documents that the purchasing
31 agency elects to include.
32 15. "Design services" means architect services, engineer services or
33 landscape architect services.
34 16. "Designee" means a duly authorized representative of the director.
35 17. "Director" means the director of the department of administration.
36 18. "Employee" means an individual drawing a salary from a state
37 governmental unit, whether elected or not, and any noncompensated individual
38 performing personal services for any state governmental unit.
39 19. "Engineer services" means those professional engineer services that
40 are within the scope of engineering practice as provided in title 32,
41 chapter 1.
42 20. "Finance services" means financing for a construction services
43 project.
44 21. "General services administration contract" means contracts awarded
45 by the United States government general services administration.

1 22. "Grant" means the furnishing of financial or other assistance,
2 including state funds or federal grant funds, by any state governmental unit
3 to any person for the purpose of supporting or stimulating educational,
4 cultural, social or economic quality of life.

5 23. "Job-order-contracting" means a project delivery method in which:

6 (a) The contract is a requirements contract for indefinite quantities
7 of construction.

8 (b) The construction to be performed is specified in job orders issued
9 during the contract.

10 (c) Finance services, maintenance services, operations services,
11 preconstruction services, design services and other related services may be
12 included.

13 24. "Landscape architect services" means those professional landscape
14 architect services that are within the scope of landscape architectural
15 practice as provided in title 32, chapter 1.

16 25. "Maintenance services" means routine maintenance, repair and
17 replacement of existing facilities, structures, buildings or real property.

18 26. "Materials":

19 (a) Means all property, including equipment, supplies, printing,
20 insurance and leases of property.

21 (b) Does not include land, a permanent interest in land or real
22 property or leasing space.

23 27. "Operations services" means routine operation of existing
24 facilities, structures, buildings or real property.

25 28. "Owner" means a state purchasing agency or state governmental unit.

26 29. "Person" means any corporation, business, individual, union,
27 committee, club, other organization or group of individuals.

28 30. "Preconstruction services" means ~~advice~~ SERVICES during the design
29 phase.

30 31. "Procurement":

31 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
32 any materials, services, construction or construction services.

33 (b) Includes all functions that pertain to obtaining any material,
34 services, construction or construction services, including description of
35 requirements, selection and solicitation of sources, preparation and award of
36 contract, and all phases of contract administration.

37 32. "Procurement officer":

38 (a) Means any person duly authorized to enter into and administer
39 contracts and make written determinations with respect to the contracts.

40 (b) Includes an authorized representative acting within the limits of
41 the authorized representative's authority.

42 33. "Purchasing agency" means any state governmental unit which is
43 authorized by this chapter or rules adopted pursuant to this chapter, or by
44 way of delegation from the director, to enter into contracts.

1 34. "Services":

2 (a) Means the furnishing of labor, time or effort by a contractor or
3 subcontractor which does not involve the delivery of a specific end product
4 other than required reports and performance.

5 (b) Does not include employment agreements or collective bargaining
6 agreements.

7 ~~35. "Specific single project" means one or more facilities at a single
8 location, at a common location or, if for a similar purpose, at multiple
9 locations.~~

10 ~~36.~~ 35. "State governmental unit" means any department, commission,
11 council, board, bureau, committee, institution, agency, government
12 corporation or other establishment or official of the executive branch or
13 corporation commission of this state.

14 ~~37.~~ 36. "Subcontractor" means a person who contracts to perform work
15 or render service to a contractor or to another subcontractor as a part of a
16 contract with a state governmental unit.

17 ~~38.~~ 37. "Using agency" means any state governmental unit which
18 utilizes any materials, services or construction procured under this chapter.

19 Sec. 17. Section 41-2532, Arizona Revised Statutes, is amended to
20 read:

21 41-2532. Methods of source selection

22 Unless otherwise authorized by law, all state contracts shall be
23 awarded by competitive sealed bidding as provided in section 41-2533, except
24 as provided in sections 41-2534 through 41-2538 and sections 41-2553,
25 41-2554, 41-2558, 41-2559, 41-2572, 41-2578, 41-2579 and 41-2636.

26 Sec. 18. Section 41-2533, Arizona Revised Statutes, is amended to
27 read:

28 41-2533. Competitive sealed bidding

29 A. Contracts shall be awarded by competitive sealed bidding except as
30 otherwise provided in section 41-2532.

31 B. An invitation for bids shall be issued and shall include a purchase
32 description and all contractual terms and conditions applicable to the
33 procurement.

34 C. Adequate public notice of the invitation for bids shall be given a
35 reasonable time before the date set forth in the invitation for the opening
36 of bids, in accordance with rules adopted by the director. The notice may
37 include publication one or more times in a newspaper of general circulation a
38 reasonable time before bid opening. If the invitation for bids is for the
39 procurement of services other than those described in sections 41-2513, ~~and~~
40 41-2578 **AND 41-2579**, the notice shall include publication in a single
41 newspaper or in multiple newspapers within this state. The publication shall
42 be not less than two weeks before bid opening and shall be circulated within
43 the affected governmental jurisdiction. The notice may also be posted at a
44 designated site on a worldwide public network of interconnected computers.

1 D. Bids shall be opened publicly at the time and place designated in
2 the invitation for bids. The amount of each bid, and such other relevant
3 information as may be specified by rule, together with the name of each
4 bidder shall be recorded. This record shall be open to public inspection at
5 the bid opening in a manner prescribed by rule. The bids shall not be open
6 for public inspection until after a contract is awarded. To the extent the
7 bidder designates and the state concurs, trade secrets or other proprietary
8 data contained in the bid documents shall remain confidential in accordance
9 with rules adopted by the director.

10 E. Bids shall be unconditionally accepted without alteration or
11 correction, except as authorized in this chapter. Bids shall be evaluated
12 based on the requirements set forth in the invitation for bids, including
13 criteria to determine acceptability such as inspection, testing, quality,
14 workmanship, delivery and suitability for a particular purpose, as prescribed
15 in rules adopted by the director. The invitation for bids shall set forth
16 the evaluation criteria to be used, including the weighting of identified
17 criteria. Evaluation criteria shall not be used for construction and no
18 criteria may be used in bid evaluation that are not set forth in the
19 invitation for bids.

20 F. The correction or withdrawal of erroneous bids before or after bid
21 opening, based on bid mistakes, may be permitted in accordance with rules
22 adopted by the director. After bid opening, no corrections in bid prices or
23 other provisions of bids prejudicial to the interest of this state or fair
24 competition shall be permitted. Except as otherwise provided by rule, all
25 decisions to permit the correction or withdrawal of bids, or to cancel awards
26 or contracts based on bid mistakes, shall be supported by a written
27 determination made by the director.

28 G. The contract shall be awarded to the lowest responsible and
29 responsive bidder whose bid conforms in all material respects to the
30 requirements and criteria set forth in the invitation for bids. The amount
31 of any applicable transaction privilege or use tax of a political subdivision
32 of this state is not a factor in determining the lowest bidder. If all bids
33 for a construction project exceed available monies as certified by the
34 appropriate fiscal officer, and the low responsive and responsible bid does
35 not exceed such monies by more than five per cent, the director may in
36 situations in which time or economic considerations preclude resolicitation
37 of work of a reduced scope negotiate an adjustment of the bid price,
38 including changes in the bid requirements, with the low responsive and
39 responsible bidder, to bring the bid within the amount of available monies.

40 H. The multistep sealed bidding method may be used if the director
41 determines in writing that it is not ~~practical~~ PRACTICABLE to initially
42 prepare a definitive purchase description which is suitable to permit an
43 award based on competitive sealed bidding. An invitation for bids may be
44 issued requesting the submission of technical offers to be followed by an
45 invitation for bids limited to those bidders whose offers are determined to

1 be technically acceptable under the criteria set forth in the first
2 solicitation, except that the multistep sealed bidding method may not be used
3 for construction contracts.

4 I. If the price of a recycled paper product which conforms to
5 specifications is within five per cent of a low bid product which is not
6 recycled and the recycled product bidder is otherwise the lowest responsible
7 and responsive bidder, the award shall be made to the bidder offering the
8 recycled product. The director may adopt rules requiring a five per cent
9 preference for other products made from recycled materials.

10 Sec. 19. Section 41-2534, Arizona Revised Statutes, is amended to
11 read:

12 41-2534. Competitive sealed proposals

13 A. If, under rules adopted pursuant to this chapter, the director
14 determines in writing that the use of competitive sealed bidding is either
15 not practicable or not advantageous to this state, a contract for materials
16 or services may be entered into by competitive sealed proposals. This
17 section does not apply to procurement of construction, construction services
18 or specified professional services pursuant to section 41-2578, subsection A
19 OR SECTION 41-2579, SUBSECTION A. Construction services shall be procured
20 pursuant to section 41-2537, ~~or~~ 41-2578 OR 41-2579. The director may provide
21 by rule that it is either not practicable or not advantageous to this state
22 to procure specified types of materials or services by competitive sealed
23 bidding.

24 B. Proposals shall be solicited through a request for proposals.

25 C. Adequate public notice of the request for proposals shall be given
26 in the same manner as provided in section 41-2533.

27 D. Proposals shall be opened publicly at the time and place designated
28 in the request for proposals. The name of each offeror and such other
29 relevant information as is specified by rule shall be publicly read and
30 recorded in accordance with rules adopted by the director. All other
31 information contained in the proposals shall be confidential so as to avoid
32 disclosure of contents prejudicial to competing offerors during the process
33 of negotiation. The proposals shall be open for public inspection after
34 contract award. To the extent the offeror designates and the state concurs,
35 trade secrets or other proprietary data contained in the offer documents
36 shall remain confidential in accordance with rules adopted by the director.

37 E. The request for proposals shall state the relative importance of
38 price and other evaluation factors. Specific numerical weighting is not
39 required.

40 F. As provided in the request for proposals, and under rules adopted
41 by the director, discussions may be conducted with responsible offerors who
42 submit proposals determined to be reasonably susceptible to being selected
43 for award for the purpose of clarification to assure full understanding of
44 the solicitation requirements and to permit revision of offers. Offerors
45 shall be accorded fair treatment with respect to any opportunity for

1 discussion. Revisions may be permitted after submission and before award.
2 If discussions are conducted, all offerors who have submitted proposals that
3 are determined by the procurement officer to be in the competitive range
4 shall be invited to submit a final proposal revision. In conducting
5 discussions, there shall be no disclosure of any information derived from
6 proposals submitted by competing offerors.

7 G. The award shall be made to the responsible offeror whose proposal is
8 determined in writing to be the most advantageous to this state taking into
9 consideration the evaluation factors set forth in the request for proposals.
10 No other factors or criteria may be used in the evaluation. The amount of
11 any applicable transaction privilege or use tax of a political subdivision of
12 this state is not a factor in determining the most advantageous proposal.
13 The contract file shall contain the basis on which the award is made.

14 Sec. 20. Section 41-2537, Arizona Revised Statutes, is amended to
15 read:

16 41-2537. Emergency procurements

17 Notwithstanding any other provision of this chapter, the director may
18 make or authorize others to make emergency procurements if there exists a
19 threat to public health, welfare, or safety or if a situation exists which
20 makes compliance with section 41-2533, 41-2534, ~~or~~ 41-2578 OR 41-2579
21 impracticable, unnecessary or contrary to the public interest as defined in
22 rules adopted by the director, except that such emergency procurements shall
23 be made with such competition as is practicable under the circumstances. A
24 written determination of the basis for the emergency and for the selection of
25 the particular contractor shall be included in the contract file.

26 Sec. 21. Section 41-2573, Arizona Revised Statutes, is amended to
27 read:

28 41-2573. Bid security

29 A. As a guarantee that the contractor will enter into a contract, bid
30 security is required for all construction procured pursuant to section
31 41-2533 and all construction services procured pursuant to section 41-2578,
32 subsection F OR SECTION 41-2579, SUBSECTION F if the purchasing agency
33 estimates that the budget for construction, excluding the cost of any finance
34 services, maintenance services, operations services, design services,
35 preconstruction services or other related services included in the contract,
36 will be more than the amount established by section 41-2535, subsection D.
37 Bid security shall be a certified check, cashier's check or surety bond.

38 B. Bid security shall be submitted in the following amounts:

39 1. For design-bid-build construction services, ten per cent of the
40 contractor's bid.

41 2. For design-build construction services awarded by competitive
42 sealed proposals pursuant to section 41-2578, subsection F OR SECTION
43 41-2579, SUBSECTION F, ten per cent of the purchasing agency's construction
44 budget for the project as stated in the request for proposals, excluding
45 finance services, maintenance services, operations services, design services,

1 preconstruction services or any other related services included in the
2 contract.

3 3. For job-order-contracting construction services awarded by
4 competitive sealed proposals pursuant to section 41-2578, subsection F **OR**
5 **SECTION 41-2579, SUBSECTION F**, the amount prescribed by the purchasing agency
6 in the request for proposals, but not more than ten per cent of the
7 purchasing agency's reasonably estimated budget for construction that the
8 purchasing agency believes is likely to actually be done during the first
9 year under the contract, excluding any finance services, maintenance
10 services, operations services, design services, preconstruction services or
11 other related services included in the contract.

12 C. Nothing in this section prevents a state governmental unit from
13 requiring such bid security in relation to any construction contract. The
14 surety bond shall be executed and furnished as required by title 34, chapter
15 2 or chapter 6, as applicable, and the conditions and provisions of the
16 surety bond regarding the surety's obligations shall follow the form required
17 by section 34-201 or ~~34-606~~ **34-608**, as applicable.

18 D. If the invitation for bids or request for proposals requires
19 security, noncompliance requires that the bid be rejected unless, pursuant to
20 rules, it is determined that the bid fails to comply in a nonsubstantial
21 manner with the security requirements.

22 E. After the bids or proposals are opened, they are irrevocable for
23 the period specified in the invitation for bids or request for proposals,
24 except as provided in section 41-2533, subsection F, ~~and~~ section 41-2578
25 subsection F **AND SECTION 41-2579, SUBSECTION F**. If a bidder is permitted to
26 withdraw its bid before award, no action may be had against the bidder or the
27 bid security.

28 Sec. 22. Section 41-2574, Arizona Revised Statutes, is amended to
29 read:

30 **41-2574. Contract performance and payment bonds**

31 A. The following bonds or security is required and is binding on the
32 parties to the contract if the value of a construction award exceeds the
33 amount established by section 41-2535:

34 1. A performance bond that is executed and furnished as required under
35 title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount
36 equal to one hundred per cent of the price specified in the contract
37 conditioned on the faithful performance of the contract in accordance with
38 the plans, specifications and conditions of the contract, except that:

39 (a) For job-order-contracting construction services, the performance
40 bond shall cover the full amount of construction under the
41 job-order-contracting construction services contract, shall not include any
42 design services, preconstruction services, finance services, maintenance
43 services, operations services or other related services included in the
44 contract, may be a single bond for the full term of the contract, a separate
45 bond for each year of a multiyear contract or a separate bond for each job

1 order, as determined by the purchasing agency, and, if a single bond for the
2 full term of the contract or a separate bond for each year of a multiyear
3 contract, shall initially be based on the purchasing agency's reasonable
4 estimate of the amount of construction that the purchasing agency believes is
5 likely to actually be done during the full term of the contract or during the
6 particular year of a multiyear contract, as applicable.

7 (b) For construction-manager-at-risk construction services and
8 design-build construction services, the amount of the performance bond shall
9 be the price of construction and shall not include the cost of any design
10 services, preconstruction services, finance services, maintenance services,
11 operations services and other related services included in the contract.
12 This bond is solely for the protection of this state. The conditions and
13 provisions of the performance bond regarding the surety's obligations shall
14 follow the form required under section 34-222, subsection G or section ~~34-608~~
15 ~~34-610~~, subsection G, as applicable.

16 2. A payment bond that is executed and furnished as required by title
17 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to
18 one hundred per cent of the price specified in the contract for the
19 protection of all persons supplying labor or material to the contractor or
20 its subcontractors for the performance of the construction provided for in
21 the contract, except that:

22 (a) For job-order-contracting construction services, the payment bond
23 shall cover the full amount of construction under the job-order-contracting
24 construction services contract, shall not include any design services,
25 preconstruction services, finance services, maintenance services, operations
26 services or other related services included in the contract, may be a single
27 bond for the full term of the contract, a separate bond for each year of a
28 multiyear contract or a separate bond for each job order, as determined by
29 the purchasing agency, and, if a single bond for the full term of the
30 contract or a separate bond for each year of a multiyear contract, shall
31 initially be based on the purchasing agency's reasonable estimate of the
32 amount of construction that the purchasing agency believes is likely to
33 actually be done during the full term of the contract or during the
34 particular year of a multiyear contract, as applicable.

35 (b) For construction-manager-at-risk construction services and
36 design-build construction services, the amount of the payment bond shall be
37 the price of construction and shall not include the cost of any design
38 services, preconstruction services, finance services, maintenance services,
39 operations services or other related services included in the contract. The
40 conditions and provisions of the payment bond regarding the surety's
41 obligations shall follow the form required under section 34-222, subsection F
42 or section ~~34-608~~ ~~34-610~~, subsection F, as applicable.

43 B. For design-bid-build construction, the bonds prescribed in
44 subsection A of this section shall be provided on and at the same time as
45 execution of the construction contract. For construction-manager-at-risk,

1 design-build and job-order-contracting construction services, the bonds
2 prescribed in subsection A of this section shall be provided only on and at
3 the same time as execution of a contract or an amendment to a contract that
4 commits the contractor to provide construction for a fixed price, guaranteed
5 maximum price or other fixed amount within a designated time frame.

6 C. If the prime contract or specifications require any persons
7 supplying labor or materials in the prosecution of the work to furnish
8 payment or performance bonds, these bonds shall be executed solely by a
9 surety company or companies holding a certificate of authority to transact
10 surety business in this state issued by the director of the department of
11 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding the
12 provisions of any other statute, the bonds shall not be executed by an
13 individual surety or sureties, even if the requirements of section 7-101 are
14 satisfied.

15 Sec. 23. Section 41-2578, Arizona Revised Statutes, is amended to
16 read:

17 41-2578. Procurement of specified professional and construction
18 services; definition

19 A. EXCEPT AS AUTHORIZED BY SECTIONS 41-2535, 41-2536, 41-2537 AND
20 41-2581, A SINGLE CONTRACT FOR architect services, assayer services,
21 construction-manager-at-risk construction services, design-build construction
22 services, engineer services, job-order-contracting construction services,
23 geologist services, landscape architect services and land surveying services
24 shall be procured as provided in this section ~~except as authorized by~~
25 ~~sections 41-2535, 41-2536 and 41-2537.~~

26 B. This state shall provide notice, in accordance with rules, of each
27 procurement of A SINGLE CONTRACT FOR professional services or construction
28 services specified in this section and shall award ~~contracts~~ THE SINGLE
29 CONTRACT on the basis of demonstrated competence and qualifications for the
30 type of professional services or construction services pursuant to procedures
31 prescribed in this section.

32 C. In the procurement of A SINGLE CONTRACT FOR these professional
33 services or construction services pursuant to this section:

34 ~~1. For procurement of professional services if the contract is for~~
35 ~~professional services by an architect or architect firm and the contract~~
36 ~~amount is two hundred fifty thousand dollars or less or is for professional~~
37 ~~services by a person or firm other than an architect and the contract amount~~
38 ~~is five hundred thousand dollars or less, the director shall encourage~~
39 ~~persons or firms engaged in the lawful practice of the profession to submit~~
40 ~~annually a statement of qualifications and experience. The director or the~~
41 ~~head of the purchasing agency shall initiate an appropriately qualified~~
42 ~~selection committee for each procurement, which may include one or more~~
43 ~~contracts, in accordance with rules adopted by the director or purchasing~~
44 ~~agency. The selection committee shall evaluate current statements of~~
45 ~~qualifications and experience on file with the director or purchasing agency,~~

1 ~~together with those that may be submitted by other persons or firms regarding~~
2 ~~the procurement. If possible, the selection committee shall conduct~~
3 ~~interviews with at least three persons or firms regarding the procurement and~~
4 ~~the relative methods of furnishing the required services and, if possible,~~
5 ~~shall select, in order of preference and based on criteria established and~~
6 ~~published by the selection committee, a separate final list for each contract~~
7 ~~being procured of at least three of the persons or firms deemed to be the~~
8 ~~most qualified to provide the services required. The selection committee~~
9 ~~shall base the selection of each final list and the order of preference on~~
10 ~~demonstrated competence and qualifications only. The purchasing agency and~~
11 ~~the selection committee shall not request or consider fees, price, man-hours~~
12 ~~or any other cost information at any point in the selection process under~~
13 ~~this paragraph, including the selection of the persons or firms to be~~
14 ~~interviewed, the selection of the persons and firms to be on a final list, in~~
15 ~~determining the order of preference of persons and firms on a final list or~~
16 ~~for any other purpose in the selection process. For each contract for~~
17 ~~professional services included in the procurement, the procurement officer~~
18 ~~shall enter into separate negotiations for the contract with the highest~~
19 ~~qualified person or firm on the final list for the contract. The~~
20 ~~negotiations shall include consideration of compensation and other contract~~
21 ~~terms that the procurement officer determines to be fair and reasonable to~~
22 ~~this state. In making this determination, the procurement officer shall take~~
23 ~~into account the estimated value, the scope, the complexity and the nature of~~
24 ~~the professional services to be rendered. If the procurement officer is~~
25 ~~unable to negotiate a satisfactory contract with the highest qualified person~~
26 ~~or firm on the final list for the contract at a price and on other contract~~
27 ~~terms the procurement officer determines to be fair and reasonable to this~~
28 ~~state, the procurement officer shall formally terminate negotiations with~~
29 ~~that person or firm. The procurement officer may undertake negotiations with~~
30 ~~the next most qualified person or firm on the final list for the contract in~~
31 ~~sequence until an agreement is reached or a determination is made to reject~~
32 ~~all persons or firms on the final list for the contract.~~

33 ~~2. For professional services if the contract amount is more than two~~
34 ~~hundred fifty thousand dollars for professional services by an architect or~~
35 ~~architect firm or five hundred thousand dollars for professional services by~~
36 ~~a person or firm other than an architect and for all construction services,~~
37 ~~the purchasing agency shall follow the procedure prescribed in this paragraph~~
38 ~~and paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of this subsection.~~
39 ~~Notwithstanding paragraph 1 of this subsection, for professional services~~
40 ~~otherwise subject to paragraph 1 of this subsection, the purchasing agency~~
41 ~~may elect to follow the procedures prescribed in this paragraph and~~
42 ~~paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of this subsection.~~

43 **1. THE FOLLOWING REQUIREMENTS APPLY:**

44 **(a) THE PURCHASING AGENCY AND THE SELECTION COMMITTEE SHALL NOT**
45 **REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT**

1 ANY POINT IN THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION
2 D OF THIS SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE
3 INTERVIEWED, THE SELECTION OF PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN
4 DETERMINING THE ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR
5 FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS.

6 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
7 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON THE FINAL LIST
8 AND THEIR ORDER ON THE FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND
9 SHALL CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE
10 PURCHASING AGENCY FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER
11 FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER
12 ACTIONS.

13 (c) A PURCHASING AGENCY IS LIMITED TO ONE CONTRACT IN EACH PROCUREMENT
14 UNDER THIS SECTION, EXCEPT THAT A PURCHASING AGENCY MAY ENTER INTO ONE
15 CONTRACT FOR THE DESIGN PHASE AND A SECOND CONTRACT FOR THE CONSTRUCTION
16 PHASE FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES AND DESIGN-BUILD
17 CONSTRUCTION SERVICES CONTRACTED BY NEGOTIATION UNDER SUBSECTION E OF THIS
18 SECTION.

19 (d) ALL CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR
20 DESIGN-BUILD CONSTRUCTION SERVICES INCLUDED IN A PROCUREMENT UNDER THIS
21 SECTION SHALL BE LIMITED TO CONSTRUCTION SERVICES TO BE PERFORMED AT A SINGLE
22 LOCATION, A COMMON LOCATION OR, IF THE CONSTRUCTION SERVICES ARE ALL FOR A
23 SIMILAR PURPOSE, MULTIPLE LOCATIONS. FOR CONSTRUCTION-MANAGER-AT-RISK
24 CONSTRUCTION SERVICES AND DESIGN-BUILD CONSTRUCTION SERVICES TO BE PERFORMED
25 AT MULTIPLE LOCATIONS THE REQUEST FOR QUALIFICATIONS MUST INCLUDE A BRIEF
26 DESCRIPTION OF THE CONSTRUCTION SERVICES TO BE PERFORMED AT EACH LOCATION AND
27 A BUDGET ESTIMATE FOR THE CONSTRUCTION SERVICES TO BE PERFORMED AT EACH
28 LOCATION.

29 (e) IF THE PURCHASING AGENCY ENTERS INTO THE FIRST CONTRACT FOR
30 PRECONSTRUCTION SERVICES, CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES AS
31 THE RESULT OF THE PROCUREMENT, THE PROCUREMENT UNDER THIS SECTION ENDS.
32 AFTER EXECUTION OF THAT FIRST CONTRACT THE PURCHASING AGENCY MAY NOT USE THE
33 PROCUREMENT OR THE EXISTING FINAL LIST IN THE PROCUREMENT AS THE BASIS FOR
34 ENTERING INTO A CONTRACT WITH ANY OTHER PERSON OR FIRM THAT PARTICIPATED IN
35 THE PROCUREMENT.

36 (f) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
37 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
38 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

39 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
40 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
41 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
42 PROCUREMENT, THE PURCHASING AGENCY, AS THE PURCHASING AGENCY DETERMINES
43 NECESSARY OR APPROPRIATE, MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
44 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING

1 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE PURCHASING
2 AGENCY MAY ELECT TO TERMINATE THE PROCUREMENT.

3 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
4 CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS
5 SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS
6 TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT
7 OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM
8 REMAINS IN THE PROCUREMENT, THE DIRECTOR MAY ELECT TO PROCEED WITH THE
9 PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE DIRECTOR DETERMINES IN
10 WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS
11 FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD
12 REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A
13 RESOLICITATION.

14 (iii) IF A PERSON OR FIRM ON THE FINAL LIST WITHDRAWS OR IS REMOVED
15 FROM THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE
16 BEST INTEREST OF THE STATE, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON
17 OR FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
18 QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION
19 COMMITTEE AS THE NEXT MOST QUALIFIED.

20 2. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR
21 EACH PROCUREMENT AND GIVE ADEQUATE PUBLIC NOTICE OF THE REQUEST FOR
22 QUALIFICATIONS IN THE SAME MANNER AS PROVIDED IN SECTION 41-2533. THE
23 REQUEST FOR QUALIFICATIONS SHALL:

24 (a) STATE THAT ONE CONTRACT MAY OR WILL BE AWARDED AND THE SERVICES TO
25 BE PERFORMED UNDER THE CONTRACT.

26 (b) STATE THAT THERE WILL BE A SINGLE FINAL LIST OF THREE PERSONS OR
27 FIRMS.

28 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
29 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
30 PROVIDED THAT FOR CONSTRUCTION SERVICES ONE OF THE CRITERIA SHALL BE THE
31 PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR PROCEDURES TO IMPLEMENT
32 THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN:

33 (i) IF INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
34 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
35 BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND THE REQUEST
36 FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
37 THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON THE
38 FINAL LIST AND IN DETERMINING THEIR ORDER ON THE FINAL LIST. THE FINAL LIST
39 SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE SELECTION
40 CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR FIRMS TO BE
41 INTERVIEWED.

42 (ii) IF INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS
43 SHALL STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
44 CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON THE FINAL LIST AND
45 IN DETERMINING THEIR ORDER ON THE FINAL LIST.

1 (d) IF THE PURCHASING AGENCY WILL HOLD INTERVIEWS AS PART OF THE
2 SELECTION PROCESS, STATE THAT INTERVIEWS WILL BE HELD AND THAT THE INTERVIEWS
3 WILL BE WITH AT LEAST THREE AND NO MORE THAN FIVE PERSONS OR FIRMS.

4 (e) FOR PROCUREMENTS OF CONSTRUCTION SERVICES, INCLUDE EITHER:

5 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
6 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED
7 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
8 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
9 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

10 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE PURCHASING AGENCY
11 THAT APPLIES TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE
12 CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED
13 ON QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
14 NOT BASED ON PRICE ALONE AND A REQUIREMENT THAT EACH PERSON OR FIRM MUST
15 SUBMIT A DESCRIPTION OF THE PROCEDURES IT PROPOSES TO USE TO IMPLEMENT THE
16 PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN.

17 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
18 PURCHASING AGENCY'S PROTEST POLICY AND PROCEDURES OR, IF THE PURCHASING
19 AGENCY DOES NOT HAVE A PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE
20 PROTEST POLICY AND PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION
21 APPLY TO ANY PROTESTS IN CONNECTION WITH THE PROCUREMENT.

22 3. The director or head of a purchasing agency shall initiate an
23 appropriately qualified selection committee for each request for
24 qualifications in accordance with rules adopted by the director. THE
25 DIRECTOR OR HEAD OF A PURCHASING AGENCY SHALL ENSURE THAT THE SELECTION
26 COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION COMMITTEE. If
27 procuring professional services, the purchasing agency shall determine the
28 number and qualifications of the selection committee members. A selection
29 committee for the procurement of construction services shall not have more
30 than seven members and shall include at least one person who is a senior
31 management employee of a licensed contractor and one person who is an
32 architect or an engineer who is registered pursuant to section 32-121. These
33 members may be employees of the purchasing agency or outside consultants.
34 Outside contractors, architects and engineers serving on a selection
35 committee shall not receive compensation from the purchasing agency for
36 performing this service, but the purchasing agency may elect to reimburse
37 outside contractors, architects and engineers for travel, lodging and other
38 expenses incurred in connection with service on a selection committee. A
39 person who is a member of a selection committee shall not be a contractor
40 under a contract awarded under the procurement or provide ANY PROFESSIONAL
41 SERVICES, construction, construction services, materials or OTHER services
42 under the contract. The selection committee AND THE PURCHASING AGENCY shall
43 DO THE FOLLOWING:

44 (a) Evaluate IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR
45 QUALIFICATIONS:

1 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSON OR FIRMS TO BE
2 INTERVIEWED BY EVALUATING the statements of qualifications and performance
3 data that are submitted in response to the purchasing agency's request for
4 qualifications BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
5 THE SELECTION CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO
6 DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

7 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
8 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
9 ON THE FINAL LIST AND TO DETERMINE THEIR ORDER ON THE FINAL LIST ARE NOT
10 INCLUDED IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD
11 THE PURCHASING AGENCY SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE
12 INTERVIEWED THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
13 CRITERIA TO BE USED TO SELECT THE PERSONS OR FIRMS ON THE FINAL LIST AND TO
14 DETERMINE THEIR ORDER ON THE FINAL LIST. THESE SELECTION CRITERIA AND
15 RELATIVE WEIGHT MAY BE DIFFERENT THAN THE SELECTION CRITERIA AND RELATIVE
16 WEIGHT USED TO DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

17 ~~(b) If determined by the purchasing agency and included by the~~
18 ~~purchasing agency in the request for qualifications.~~

19 (iii) THE SELECTION COMMITTEE SHALL conduct interviews with at least
20 three but not more than five persons or firms as specified in the request for
21 qualifications regarding the professional services or construction services
22 and the relative methods of approach for furnishing the required professional
23 services or construction services. ~~, except that if multiple contracts are~~
24 ~~being procured under a single request for qualifications, the number to be~~
25 ~~interviewed shall be at least three and not more than the number of contracts~~
26 ~~plus two.~~

27 ~~(c) After any interviews, in order of preference, based on the~~
28 ~~criteria and the weighting of the criteria included in the request for~~
29 ~~qualifications, select a final list for each contract of three of the persons~~
30 ~~or firms the selection committee deems to be the most qualified to provide~~
31 ~~the professional services or construction services.~~

32 (b) BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
33 SELECTION CRITERIA SPECIFIED AS PROVIDED IN THIS SECTION FOR SELECTION OF THE
34 PERSONS OR FIRMS ON THE FINAL LIST AND THEIR ORDER ON THE FINAL LIST, THE
35 SELECTION COMMITTEE SHALL SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST and,
36 in the case of A FINAL LIST FOR a contract that will be negotiated under
37 subsection E of this section, rank the three persons or firms on the final
38 list in order of preference. ~~The selection committee shall base the~~
39 ~~selection of the final list and the order of preference on demonstrated~~
40 ~~competence and qualifications only. If the request for qualifications~~
41 ~~solicited multiple contracts, the selection committee shall select a separate~~
42 ~~final list for each contract, except that if multiple contracts are being~~
43 ~~procured and if the request for qualifications specified that all of the~~
44 ~~multiple contracts will be awarded to a single contractor, the selection~~
45 ~~committee may select a single final list for all of the multiple contracts.~~

1 ~~If only two responsible and responsive persons or firms respond to the~~
2 ~~request for qualifications or if persons or firms withdraw from the~~
3 ~~procurement process so that there are only two responsible and responsive~~
4 ~~persons or firms remaining in the procurement process, the purchasing agency~~
5 ~~may elect to have the selection committee proceed with the procurement,~~
6 ~~including interviews and the final list, with those two persons or firms or~~
7 ~~the purchasing agency may readvertise pursuant to this subsection as the~~
8 ~~purchasing agency deems necessary or appropriate. If only one responsive and~~
9 ~~responsible person or firm responds to the request for qualifications or if~~
10 ~~persons or firms withdraw from the procurement process for a contract or~~
11 ~~multiple contracts to be negotiated under subsection E of this section so~~
12 ~~that only one responsive and responsible person or firm remains in the~~
13 ~~procurement process, the purchasing agency may elect to proceed with only one~~
14 ~~person or firm in the procurement process and may award the contract or~~
15 ~~contracts to a single person or firm if the purchasing agency determines in~~
16 ~~writing that the fee negotiated pursuant to subsection E of this section is~~
17 ~~fair and reasonable and either other prospective persons or firms had a~~
18 ~~reasonable opportunity to respond or there is not adequate time for a~~
19 ~~resolicitation. If a person or firm on the final list withdraws or is~~
20 ~~removed from the procurement process and the selection committee determines~~
21 ~~that it is in the best interest of the purchasing agency, the selection~~
22 ~~committee may replace that person or firm with another person or firm that~~
23 ~~submitted qualifications and that is selected by the selection committee as~~
24 ~~the next most qualified.~~

25 ~~(d) Base the selection of the final list and order of preference on~~
26 ~~the final list on demonstrated competence and qualifications only.~~

27 ~~3. The purchasing agency shall issue a request for qualifications for~~
28 ~~each contract and give adequate public notice of the request for~~
29 ~~qualifications in the same manner as provided in section 41-2533. The~~
30 ~~request for qualifications shall state:~~

31 ~~(a) The criteria to be used by the selection committee to select the~~
32 ~~person or firm to perform the professional services or the construction~~
33 ~~services. The request for qualifications shall also state in a manner~~
34 ~~determined by the purchasing agency the relative weight of the selection~~
35 ~~criteria and, if required under paragraph 8, subdivision (b) of this~~
36 ~~subsection, that one of the criteria will be the person's or firm's~~
37 ~~subcontractor selection plan or procedures to implement the purchasing~~
38 ~~agency's subcontractor selection plan.~~

39 ~~(b) If the purchasing agency will hold interviews as part of the~~
40 ~~selection process, that interviews shall be held with at least three and no~~
41 ~~more than five persons or firms, except that if multiple contracts are being~~
42 ~~procured under a single request for qualifications solicitation under this~~
43 ~~subsection or a single request for qualifications and request for proposals~~
44 ~~solicitation under this subsection and subsection F of this section, the~~

1 ~~number to be interviewed shall be at least three and not more than the number~~
2 ~~of contracts plus two.~~

3 ~~4. A purchasing agency may procure multiple contracts under a single~~
4 ~~request for qualifications procurement process under this subsection or, for~~
5 ~~job order contracting construction services or design build construction~~
6 ~~services, under a single request for qualifications and request for proposals~~
7 ~~procurement process under this subsection and subsection F of this section.~~
8 ~~If a purchasing agency does this:~~

9 ~~(a) The advertisement and the request for qualifications shall state~~
10 ~~that multiple contracts may or will be awarded, shall state the number of~~
11 ~~contracts that may or will be awarded and shall describe the services to be~~
12 ~~performed under each contract.~~

13 ~~(b) There shall be a single selection process for all of the multiple~~
14 ~~contracts, except that for each contract there shall be a separate final list~~
15 ~~and a separate negotiation under subsection E of this section or a separate~~
16 ~~request for proposals competition under subsection F of this section.~~
17 ~~However, if the request for qualifications specifies that all of the multiple~~
18 ~~contracts will be awarded to a single contractor, there may be a single final~~
19 ~~list and a single negotiation for all of the multiple contracts under~~
20 ~~subsection E of this section or a single request for proposals competition~~
21 ~~under subsection F of this section.~~

22 ~~(c) The purchasing agency may award all of the multiple contracts to~~
23 ~~one contractor or may award the multiple contracts to multiple contractors.~~

24 ~~5. For professional services, a purchasing agency may procure multiple~~
25 ~~contracts using a single request for qualifications solicitation under this~~
26 ~~subsection, except that professional services that are part of design build~~
27 ~~construction services may not be procured under this paragraph. Each of the~~
28 ~~multiple contracts for professional services must have a term not exceeding~~
29 ~~five years and may continue in effect after the five year term for~~
30 ~~professional services on projects commenced within the five year term.~~

31 ~~6. For job order contracting construction services, a purchasing~~
32 ~~agency may procure multiple contracts using a single request for~~
33 ~~qualifications solicitation under this subsection or using a single request~~
34 ~~for qualifications and request for proposals solicitation under this~~
35 ~~subsection and subsection F of this section.~~

36 ~~7. For construction manager at risk construction services and for~~
37 ~~design build construction services, a purchasing agency may procure multiple~~
38 ~~contracts using a single request for qualifications solicitation under this~~
39 ~~subsection or for design build construction services using a single request~~
40 ~~for qualifications and request for proposals solicitation under this~~
41 ~~subsection and subsection F of this section but in either case only for a~~
42 ~~specific single project. Portions of the specific single project shall be~~
43 ~~allocated to separate contracts.~~

44 ~~8. For construction manager at risk construction services,~~
45 ~~design build construction services and job order contracting construction~~

1 ~~services if the contract or contracts will be negotiated under subsection E~~
2 ~~of this section or for job order contracting construction services if the~~
3 ~~contract will be awarded pursuant to subsection F of this section:~~

4 ~~(a) The person or firm selected to perform the construction services~~
5 ~~must select subcontractors based on qualifications alone or on a combination~~
6 ~~of qualifications and price and shall not select subcontractors based on~~
7 ~~price alone. A qualifications and price selection may be a single step~~
8 ~~selection based on a combination of qualifications and price or a two step~~
9 ~~selection. In a two step selection, the first step shall be based on~~
10 ~~qualifications alone and the second step may be based on a combination of~~
11 ~~qualifications and price or on price alone.~~

12 ~~(b) The purchasing agency shall include in the request for~~
13 ~~qualifications either:~~

14 ~~(i) A requirement that each person or firm submit a proposed~~
15 ~~subcontractor selection plan, a requirement that the proposed subcontractor~~
16 ~~selection plan must select subcontractors based on qualifications alone or on~~
17 ~~a combination of qualifications and price and shall not select subcontractors~~
18 ~~based on price alone and, as a selection criteria under the request for~~
19 ~~qualifications, an evaluation of each person's or firm's proposed~~
20 ~~subcontractor selection plan.~~

21 ~~(ii) A subcontractor selection plan adopted by the purchasing agency~~
22 ~~that will apply to the person or firm that is selected to perform the~~
23 ~~construction services and that requires subcontractors to be selected based~~
24 ~~on qualifications alone or on a combination of qualifications and price and~~
25 ~~not based on price alone, a requirement that each person or firm must submit~~
26 ~~a description of the procedures it proposes to use to carry out the~~
27 ~~purchasing agency's subcontractor selection plan and, as a selection criteria~~
28 ~~under the request for qualifications, an evaluation of each person's or~~
29 ~~firm's proposed procedures to carry out the purchasing agency's subcontractor~~
30 ~~selection plan.~~

31 ~~(c) The purchasing agency shall include in its contract with the~~
32 ~~selected person or firm either:~~

33 ~~(i) If the purchasing agency included its subcontractor selection plan~~
34 ~~in the request for qualifications, the purchasing agency's subcontractor~~
35 ~~selection plan and the procedures proposed by the selected person or firm in~~
36 ~~submitting its qualifications with those modifications to the procedures as~~
37 ~~the purchasing agency and the selected person or firm agree.~~

38 ~~(ii) If the purchasing agency did not include its subcontractor~~
39 ~~selection plan in the request for qualifications, the subcontractor selection~~
40 ~~plan proposed by the selected person or firm in submitting its qualifications~~
41 ~~with those modifications as the purchasing agency and the selected person or~~
42 ~~firm agree.~~

43 ~~(d) In making the selection of subcontractors, the person or firm~~
44 ~~selected to perform the construction services shall use the subcontractor~~
45 ~~selection plan and any procedures included in its contract.~~

1 ~~9. The purchasing agency and the selection committee shall not request~~
2 ~~or consider fees, price, man hours or any other cost information at any point~~
3 ~~in the selection process under this subsection and subsection D of this~~
4 ~~section, including the selection of the persons or firms to be interviewed,~~
5 ~~the selection of the persons or firms to be on the final list, in determining~~
6 ~~the order of preference of persons or firms on the final list or for any~~
7 ~~other purpose in the selection process.~~

8 ~~10. For construction manager at risk construction services and~~
9 ~~design-build construction services, the contract or contracts under a single~~
10 ~~request for qualifications procurement process or for design-build~~
11 ~~construction services a single request for qualifications and request for~~
12 ~~proposals procurement process shall be limited to a specific single project.~~

13 (c) BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE
14 HIGHEST RANKING PERSON OR FIRM ON THE FINAL LIST THAT IT IS THE HIGHEST
15 RANKING PERSON OR FIRM, THE PURCHASING AGENCY SHALL NOTIFY EACH OF THE
16 FOLLOWING THAT IT IS NOT THE HIGHEST PERSON OR FIRM ON THE FINAL LIST OR THAT
17 ANOTHER PERSON OR FIRM IS THE HIGHEST RANKING PERSON OR FIRM ON THE FINAL
18 LIST:

19 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED.

20 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
21 MADE SUBMITTALS.

22 (d) THE SELECTION COMMITTEE SHALL COMPLETE A CONSOLIDATED SCORING
23 SHEET SHOWING ALL PERSONS OR FIRMS THAT WERE INTERVIEWED OR, IF NO INTERVIEWS
24 WERE HELD, SHOWING ALL PERSONS OR FIRMS THAT SUBMITTED QUALIFICATIONS,
25 SHOWING THE FINAL RANK OR SCORE FOR EACH SUCH PERSON OR FIRM AS TO EACH
26 SELECTION CRITERIA, SHOWING THE FINAL OVERALL RANK OR SCORE FOR EACH SUCH
27 PERSON OR FIRM AND PRESCRIBING THE CRITERIA AND RELATIVE WEIGHT OF THE
28 CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND THEIR
29 ORDER ON THE FINAL LIST.

30 D. The director shall award ~~a~~ THE SINGLE contract ~~for professional~~
31 ~~services or construction services to one of the persons or firms on the final~~
32 ~~list for that contract prepared pursuant to subsection C of this section~~
33 UNDER THE PROCUREMENT as provided in subsection E or F of this section.
34 ~~, except that:~~

35 ~~1. If only two persons or firms that the selection committee~~
36 ~~determines are qualified respond to the request for proposals pursuant to~~
37 ~~subsection F of this section or if one of the three persons or firms on the~~
38 ~~final list drops out of the selection process pursuant to subsection E or F~~
39 ~~of this section so that only two of the persons or firms on the final list~~
40 ~~remain, the purchasing agency, as the purchasing agency deems necessary or~~
41 ~~appropriate, may elect to proceed with the procurement process with the two~~
42 ~~persons or firms or elect to readvertise pursuant to subsection C of this~~
43 ~~section.~~

44 ~~2. If only one responsive and responsible person or firm responds to~~
45 ~~the request for qualifications for a contract or multiple contracts to be~~

1 ~~negotiated under subsection E of this section or if persons or firms withdraw~~
2 ~~from the procurement process so that only one responsive and responsible~~
3 ~~person or firm remains in the procurement process, the purchasing agency may~~
4 ~~award the contract or contracts to a single person or firm if the purchasing~~
5 ~~agency determines in writing that the fee negotiated pursuant to subsection E~~
6 ~~of this section is fair and reasonable and either other prospective persons~~
7 ~~or firms had a reasonable opportunity to respond or there is not adequate~~
8 ~~time for a resolicitation.~~

9 E. ~~For each contract included in the request for qualifications, THE~~
10 ~~PROCUREMENT OFFICER SHALL CONDUCT NEGOTIATIONS WITH PERSONS OR FIRMS ON THE~~
11 ~~FINAL LIST. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF COMPENSATION AND~~
12 ~~OTHER CONTRACT TERMS THAT THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND~~
13 ~~REASONABLE TO THE STATE. IN MAKING THIS DECISION, THE PROCUREMENT OFFICER~~
14 ~~SHALL TAKE INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND~~
15 ~~THE NATURE OF THE PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES TO BE~~
16 ~~RENDERED. IF IN A PROCUREMENT UNDER THIS SECTION THE PROCUREMENT OFFICER~~
17 ~~TERMINATES NEGOTIATIONS WITH A PERSON OR FIRM ON THE FINAL LIST AND COMMENCES~~
18 ~~NEGOTIATIONS WITH ANOTHER PERSON OR FIRM ON THE FINAL LIST, THE PROCUREMENT~~
19 ~~OFFICER SHALL NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A~~
20 ~~CONTRACT FOR THE CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES COVERED BY~~
21 ~~THE FINAL LIST WITH ANY PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE~~
22 ~~PROCUREMENT OFFICER HAS TERMINATED NEGOTIATIONS. THE PROCUREMENT IS FOR A~~
23 ~~SINGLE CONTRACT FOR CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES, AND THERE~~
24 ~~IS ONE FINAL LIST. The procurement officer shall enter into *separate*~~
25 ~~negotiations ~~for the contract~~ with the highest qualified person or firm on~~
26 ~~the final list. ~~for that contract determined pursuant to subsection C of~~~~
27 ~~this section for the professional services or construction services.~~
28 ~~However, if the request for qualifications is for multiple contracts and~~
29 ~~specifies that all of the multiple contracts will be awarded to a single~~
30 ~~contractor, there may be a single negotiation for all of the multiple~~
31 ~~contracts. The negotiations shall include consideration of compensation and~~
32 ~~other contract terms that the officer determines to be fair and reasonable to~~
33 ~~this state. In making this decision, the procurement officer shall take into~~
34 ~~account the estimated value, the scope, the complexity and the nature of the~~
35 ~~professional services or construction services to be rendered. If the~~
36 ~~procurement officer is *unable* NOT ABLE to negotiate a satisfactory contract~~
37 ~~with the highest qualified person or firm on the final list, at compensation~~
38 ~~and on other contract terms the procurement officer determines to be fair and~~
39 ~~reasonable to this state, the procurement officer shall formally terminate~~
40 ~~negotiations with that person or firm. The procurement officer *may* SHALL~~
41 ~~THEN undertake negotiations with the next most qualified person or firm on~~
42 ~~the final list in sequence until an agreement is reached or a determination~~
43 ~~is made to reject all persons or firms on the final list. ~~If a contract for~~~~
44 ~~construction services is entered into pursuant to this subsection:~~

1 ~~1. If the contract is for construction manager at risk construction~~
2 ~~services and includes preconstruction services by the contractor or if the~~
3 ~~contract is for design build construction services, the purchasing agency~~
4 ~~shall enter into a written contract with the contractor for preconstruction~~
5 ~~services under which contract the purchasing agency shall pay the contractor~~
6 ~~a fee for preconstruction services in an amount agreed by the purchasing~~
7 ~~agency and the contractor, and the purchasing agency shall not request or~~
8 ~~obtain a fixed price or a guaranteed maximum price for the construction from~~
9 ~~the contractor or enter into a construction contract with the contractor~~
10 ~~until after the purchasing agency has entered into the written contract for~~
11 ~~preconstruction services and a preconstruction services fee.~~

12 ~~2. Construction shall not commence until the purchasing agency and~~
13 ~~contractor agree in writing on either a fixed price that the purchasing~~
14 ~~agency will pay for the construction to be commenced or a guaranteed maximum~~
15 ~~price for the construction to be commenced.~~

16 F. As an alternative to subsection E of this section, the procurement
17 officer may award A SINGLE CONTRACT FOR design-build construction services or
18 job-order-contracting construction services as follows:

19 1. The procurement officer shall use the selection committee appointed
20 for the request for qualifications pursuant to subsection C of this section.

21 2. The procurement officer shall issue a request for proposals to the
22 persons or firms on the final list developed pursuant to subsection C of this
23 section.

24 3. ~~For design-build construction services and job-order-contracting~~
25 ~~construction services,~~ The request for proposals shall include:

26 (a) The purchasing agency's project schedule and project final BUDGET
27 FOR design and construction budget or life cycle budget for a procurement
28 that includes maintenance services or operations services.

29 (b) A statement that the contract or contracts will be awarded to the
30 person or firm whose proposal receives the highest number of points under a
31 scoring method.

32 (c) A description of the scoring method, including a list of the
33 factors in the scoring method and the number of points allocated to each
34 factor. The factors in the scoring method shall include:

35 (i) For design-build construction services only, demonstrated
36 compliance with the design requirements.

37 (ii) Offeror qualifications.

38 (iii) Offeror financial capacity.

39 (iv) Compliance with the purchasing agency's project schedule.

40 (v) For design-build construction services only, if the request for
41 proposals specifies that the purchasing agency will spend its project budget
42 and not more than its project budget and is seeking the best proposal for the
43 project budget, compliance of the offeror's price or life cycle price for
44 procurements that include maintenance services, operations services or

1 finance services with the purchasing agency's budget as prescribed in the
2 request for proposals.

3 (vi) For design-build construction services if the request for
4 proposals does not contain the specifications prescribed in item (v) and for
5 job-order-contracting construction services, the price or life cycle price
6 for procurements that include maintenance services, operations services or
7 finance services.

8 (vii) An offeror quality management plan.

9 (viii) Other evaluation factors as determined by the purchasing
10 agency, if any.

11 (d) For design-build construction services only, the design
12 requirements.

13 (e) A requirement that each offeror submit separately a technical
14 proposal and a price proposal and that the offeror's entire proposal be
15 responsive to the requirements in the request for proposals. For
16 design-build construction services, the price in the price proposal shall be
17 a fixed price or a guaranteed maximum price.

18 (f) A statement that in applying the scoring method the selection
19 committee will separately evaluate the technical proposal and the price
20 proposal and will evaluate and score the technical proposal before opening
21 the price proposal.

22 (g) If the purchasing agency conducts discussions pursuant to
23 paragraph 5 of this subsection, a statement that discussions will be held and
24 a requirement that each offeror submit a preliminary technical proposal
25 before the discussions are held.

26 4. If the purchasing agency determines to conduct discussions pursuant
27 to paragraph 5 of this subsection, each offeror shall submit a preliminary
28 technical proposal to the purchasing agency before those discussions are
29 held.

30 5. If determined by the purchasing agency and included by the
31 purchasing agency in the request for proposals, the selection committee shall
32 conduct discussions with all persons or firms that submit preliminary
33 technical proposals. Discussions shall be for the purpose of clarification
34 to ~~assure~~ ENSURE full understanding of, and responsiveness to, the
35 solicitation requirements. Offerors shall be accorded fair treatment with
36 respect to any opportunity for discussion and for clarification by the owner.
37 Revision of preliminary technical proposals shall be permitted after
38 submission of preliminary technical proposals and before award for the
39 purpose of obtaining best and final proposals. In conducting any
40 discussions, information derived from proposals submitted by competing
41 offerors shall not be disclosed to other competing offerors.

42 6. After completion of any discussions pursuant to paragraph 5 of this
43 subsection or if no discussions are held, each offeror shall submit
44 separately its final technical proposal and its price proposal.

1 7. Before opening any price proposal, the selection committee shall
2 open the final technical proposals, evaluate the final technical proposals
3 and score the final technical proposals using the scoring method in the
4 request for proposals. No other factors or criteria may be used in the
5 evaluation and scoring.

6 8. After completion of the evaluation and scoring of all final
7 technical proposals, the selection committee shall open the price proposals,
8 evaluate the price proposals, score the price proposals and complete the
9 scoring of the entire proposals using the scoring method in the request for
10 proposals. No other factors or criteria may be used in the evaluation and
11 scoring. THE SELECTION COMMITTEE SHALL COMPLETE A CONSOLIDATED SCORING SHEET
12 SHOWING FOR EACH OFFEROR THAT SUBMITTED A PROPOSAL ITS FINAL SCORE FOR EACH
13 FACTOR IN THE SCORING METHOD INCLUDED IN THE REQUEST FOR PROPOSALS AND ITS
14 FINAL OVERALL SCORE. THE CONSOLIDATED SCORING SHEET SHALL ALSO INCLUDE THE
15 DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE SCORING METHOD
16 AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS INCLUDED IN THE
17 REQUEST FOR PROPOSALS.

18 9. The procurement officer shall award the contract or contracts to
19 the responsive and responsible offeror whose proposal receives the highest
20 score under the method of scoring in the request for proposals. No other
21 factors or criteria may be used in the evaluation. BEFORE OR AT THE SAME
22 TIME AS THE PURCHASING AGENCY NOTIFIES THE WINNING OFFEROR THAT IT HAS WON,
23 THE PURCHASING AGENCY SHALL NOTIFY EACH OTHER OFFEROR EITHER THAT THE OFFEROR
24 HAS NOT WON OR THAT ANOTHER OFFEROR HAS WON.

25 10. The contract or contracts file shall contain the basis on which the
26 award is made, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED
27 UNDER SUBSECTION G OF THIS SECTION.

28 11. For design-build construction services only, the procurement
29 officer shall award a stipulated fee equal to a percentage, as prescribed in
30 the request for proposals, of the purchasing agency's project final BUDGET
31 FOR design and construction ~~budget~~, as prescribed in the request for
32 proposals, but not less than two-tenths of one per cent of the project final
33 BUDGET FOR design and construction ~~budget~~ to each final list offeror who
34 provides a responsive, but unsuccessful, proposal. If the procurement
35 officer does not award a contract, all responsive final list offerors shall
36 receive the stipulated fee based on the purchasing agency's ~~estimate of the~~
37 project final BUDGET FOR design and construction ~~budget~~ as included in the
38 request for proposals. The procurement officer shall pay the stipulated fee
39 to each offeror within ninety days after the award of the initial contract or
40 the decision not to award a contract. In consideration for paying the
41 stipulated fee, the procurement officer may use any ideas or information
42 contained in the proposals in connection with any contract awarded for the
43 project, or in connection with a subsequent procurement, without any
44 obligation to pay any additional compensation to the ~~unsuccessful~~ offerors.
45 Notwithstanding the other provisions of this paragraph, ~~an unsuccessful~~ A

1 final list offeror may elect to waive the stipulated fee. If ~~an unsuccessful~~
2 A final list offeror elects to waive the stipulated fee, the purchasing
3 agency may not use ideas and information contained in the offeror's proposal,
4 except that this restriction does not prevent the purchasing agency from
5 using any idea or information if the idea or information is also included in
6 a proposal of an offeror that accepts the stipulated fee.

7 G. AT A MINIMUM, THE PURCHASING AGENCY SHALL RETAIN THE FOLLOWING FOR
8 EACH PROCUREMENT UNDER THIS SECTION.

9 1. FOR EACH REQUEST FOR QUALIFICATIONS PROCUREMENT PROCESS UNDER
10 SUBSECTION C OF THIS SECTION:

11 (a) IF INTERVIEWS WERE NOT HELD:

12 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
13 AND, IF DIFFERENT, THE SUBMITTAL OF THE PERSON OR FIRM WITH WHICH THE
14 PURCHASING AGENCY ENTERS INTO A CONTRACT.

15 (ii) THE FINAL LIST.

16 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
17 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
18 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

19 (iv) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
20 THAT SUBMITTED QUALIFICATIONS ITS SCORE OR RANK ON EACH SELECTION CRITERIA
21 AND ITS OVERALL SCORE OR RANK.

22 (b) IF INTERVIEWS WERE HELD:

23 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
24 LIST AND, IF DIFFERENT, ALL SUBMITTALS OF THE PERSON OR FIRM WITH WHICH THE
25 PURCHASING AGENCY ENTERS INTO A CONTRACT.

26 (ii) THE FINAL LIST.

27 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
28 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
29 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

30 (iv) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
31 THAT WAS INTERVIEWED ITS SCORE OR RANK ON EACH SELECTION CRITERIA AND ITS
32 OVERALL SCORE OR RANK.

33 2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION
34 F OF THIS SECTION:

35 (a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED
36 THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND, IF
37 DIFFERENT, THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM WITH WHICH THE
38 PURCHASING AGENCY ENTERS INTO A CONTRACT.

39 (b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE
40 SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS
41 INCLUDED IN THE REQUEST FOR PROPOSALS.

42 (c) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
43 THAT SUBMITTED A PROPOSAL ITS FINAL SCORE FOR EACH FACTOR IN THE SCORING
44 METHOD INCLUDED IN THE REQUEST FOR PROPOSALS AND ITS FINAL OVERALL SCORE.

1 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
2 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

3 1. ~~Until award and execution of a contract by a~~ THE purchasing agency
4 AWARDS A CONTRACT OR TERMINATES THE PROCUREMENT, only the name of each person
5 or firm on the final list developed pursuant to subsection C of this section
6 may be made available to the public. All other information received by the
7 purchasing agency in response to the request for qualifications PURSUANT TO
8 SUBSECTION C OF THIS SECTION or contained in ~~the~~ proposals SUBMITTED PURSUANT
9 TO SUBSECTION F OF THIS SECTION shall be confidential in order to avoid
10 disclosure of the contents that may be prejudicial to competing SUBMITTERS
11 AND offerors during the selection process. ~~The proposals shall be open to~~
12 ~~public inspection after the contract is awarded and the purchasing agency has~~
13 ~~executed the contract.~~

14 2. AFTER THE PURCHASING AGENCY AWARDS THE CONTRACT OR TERMINATES THE
15 PROCUREMENT, THE PURCHASING AGENCY SHALL MAKE AVAILABLE TO THE PUBLIC ALL OF
16 THE ITEMS THAT THE PURCHASING AGENCY IS REQUIRED TO RETAIN UNDER SUBSECTION G
17 OF THIS SECTION, EXCEPT THE PROPOSALS SUBMITTED IN RESPONSE TO A REQUEST FOR
18 PROPOSALS UNDER SUBSECTION F OF THIS SECTION.

19 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
20 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE PURCHASING AGENCY HAS
21 ENTERED INTO A CONTRACT OR TERMINATED THE PROCUREMENT. THE PROPOSALS
22 SUBMITTED UNDER SUBSECTION F OF THIS SECTION THAT THE PURCHASING AGENCY IS
23 REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS SECTION SHALL BE MADE AVAILABLE
24 TO THE PUBLIC AFTER THE PURCHASING AGENCY HAS ENTERED INTO A CONTRACT OR
25 TERMINATED THE PROCUREMENT.

26 4. To the extent that the offeror designates and the purchasing agency
27 concurs, trade secrets and other proprietary data contained in a proposal
28 remain confidential.

29 ~~H.~~ I. A purchasing agency may cancel a request for qualifications or
30 a request for proposals, ~~or~~ reject in whole or in part any or all submissions
31 of qualifications or proposals OR DETERMINE NOT TO ENTER INTO A CONTRACT as
32 specified in the solicitation if it is in the best interest of the purchasing
33 agency. The purchasing agency shall make the reasons for cancellation, ~~or~~
34 rejection OR DETERMINATION NOT TO ENTER INTO A CONTRACT part of the contract
35 file.

36 ~~I. Notwithstanding any other law:~~

37 ~~1. The contractor for design-build or job-order contracting~~
38 ~~construction services is not required to be registered to perform design~~
39 ~~services pursuant to title 32, chapter 1 if the person or firm actually~~
40 ~~performing the design services on behalf of the contractor is appropriately~~
41 ~~registered.~~

42 ~~2. The contractor for construction-manager-at-risk, design-build or~~
43 ~~job-order contracting construction services shall be licensed to perform~~
44 ~~construction pursuant to title 32, chapter 10.~~

1 ~~J. For job order contracting construction services only:~~
2 ~~1. The maximum dollar amount of an individual job order shall be one~~
3 ~~million dollars or such higher or lower amount prescribed by the director in~~
4 ~~a rule adopted pursuant to chapter 6 of this title as the maximum amount of~~
5 ~~an individual job order, except that:~~
6 ~~(a) The amount for school districts in rules adopted pursuant to~~
7 ~~section 15-213, subsection A shall be one million dollars or such higher or~~
8 ~~lower amount as adopted by the director.~~
9 ~~(b) Without affecting the scope of section 41-2501, subsection N or~~
10 ~~any similar provision, the maximum amount of an individual job order for the~~
11 ~~Arizona board of regents, the legislative and judicial branches of state~~
12 ~~government and the state compensation fund shall be one million dollars or~~
13 ~~such higher or lower amount adopted by the Arizona board of regents, the~~
14 ~~legislative or judicial branches of state government or the state~~
15 ~~compensation fund, respectively, either in an action noticed pursuant to~~
16 ~~title 38, chapter 3, article 3.1 or an adopted rule. Requirements shall not~~
17 ~~be artificially divided or fragmented in order to constitute a job order that~~
18 ~~satisfies this requirement.~~
19 ~~2. If the contractor subcontracts or intends to subcontract part or~~
20 ~~all of the work under a job order and if the job order construction services~~
21 ~~contract includes descriptions of standard individual tasks, standard unit~~
22 ~~prices for standard individual tasks and pricing of job orders based on the~~
23 ~~number of units of standard individual tasks in the job order:~~
24 ~~(a) The contractor has a duty to deliver promptly to each~~
25 ~~subcontractor invited to bid a coefficient to the contractor to do all or~~
26 ~~part of the work under one or more job orders:~~
27 ~~(i) A copy of the descriptions of all standard individual tasks on~~
28 ~~which the subcontractor is invited to bid.~~
29 ~~(ii) A copy of the standard unit prices for the individual tasks on~~
30 ~~which the subcontractor is invited to bid.~~
31 ~~(b) If not previously delivered to the subcontractor, the contractor~~
32 ~~has a duty to deliver promptly the following to each subcontractor invited to~~
33 ~~or that has agreed to do any of the work included in any job order:~~
34 ~~(i) A copy of the description of each standard individual task that is~~
35 ~~included in the job order and that the subcontractor is invited to perform.~~
36 ~~(ii) The number of units of each standard individual task that is~~
37 ~~included in the job order and that the subcontractor is invited to perform.~~
38 ~~(iii) The standard unit price for each standard individual task that~~
39 ~~is included in the job order and that the subcontractor is invited to~~
40 ~~perform.~~
41 ~~K. Notwithstanding anything to the contrary in this section or this~~
42 ~~title, a purchasing agency shall not:~~
43 ~~1. Enter into a contract as contractor to provide~~
44 ~~construction manager at risk construction services, design-build construction~~
45 ~~services or job order contracting construction services.~~

1 ~~2. Contract with itself, with another purchasing agency, with this~~
2 ~~state or with any other governmental unit of this state or the federal~~
3 ~~government for the purchasing agency to provide construction manager at risk~~
4 ~~construction services, design build construction services or~~
5 ~~job order contracting construction services.~~

6 ~~L. The prohibitions prescribed in subsection K of this section do not~~
7 ~~prohibit a purchasing agency from providing construction for itself as~~
8 ~~provided by law.~~

9 J. IF THE PURCHASING AGENCY DOES NOT HAVE A PROCUREMENT PROTEST POLICY
10 AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE
11 PURCHASING AGENCY, FOR PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION
12 THE PURCHASING AGENCY SHALL FOLLOW THE PROCUREMENT PROTEST POLICY AND
13 PROCEDURES OF THE DEPARTMENT. THE PURCHASING AGENCY SHALL PROCESS ALL
14 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION.

15 ~~M.~~ K. For the purposes of this section, "professional services"
16 includes architect services, engineer services, landscape architect services,
17 assayer services, geologist services and land surveying services and any
18 combination of those services.

19 ~~N. The procurement officer shall include in each contract for~~
20 ~~construction services the full street or physical address of each separate~~
21 ~~location at which the construction will be performed and a requirement that~~
22 ~~the contractor and each subcontractor at any level include in each of its~~
23 ~~subcontracts the same address information. The contractor and each~~
24 ~~subcontractor at any level shall include in each subcontract the full street~~
25 ~~or physical address of each separate location at which construction work will~~
26 ~~be performed.~~

27 Sec. 24. Renumber

28 Sections 41-2579 and 41-2580, Arizona Revised Statutes, are renumbered
29 as sections 41-2582 and 41-2583.

30 Sec. 25. Title 41, chapter 23, article 5, Arizona Revised Statutes, is
31 amended by adding new sections 41-2579 and 41-2580 and section 41-2581, to
32 read:

33 41-2579. Procurement of multiple contracts for certain
34 professional services and certain
35 job-order-contracting construction services;
36 definition

37 A. EXCEPT AS AUTHORIZED IN THIS SECTION AND IN SECTIONS 41-2535,
38 41-2536, 41-2537 AND 41-2581, A PURCHASING AGENCY SHALL NOT PROCURE IN A
39 SINGLE PROCUREMENT MULTIPLE CONTRACTS FOR CONSTRUCTION SERVICES OR
40 PROFESSIONAL SERVICES. IN A PROCUREMENT UNDER THIS SECTION, THERE IS A
41 SINGLE PROCUREMENT PROCESS FOR ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE
42 PROCUREMENT. A PURCHASING AGENCY MAY PROCURE UNDER THIS SECTION:

43 1. MULTIPLE CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION
44 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS.

1 2. MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES TO BE AWARDED TO
2 SEPARATE PERSONS OR FIRMS OR TO BE AWARDED TO A SINGLE PERSON OR FIRM AS
3 SPECIFIED IN THE REQUEST FOR QUALIFICATIONS.

4 B. A PURCHASING AGENCY SHALL PROVIDE NOTICE OF EACH PROCUREMENT UNDER
5 THIS SECTION AND SHALL AWARD CONTRACTS ON THE BASIS OF DEMONSTRATED
6 COMPETENCE AND QUALIFICATIONS FOR THE TYPE OF PROFESSIONAL SERVICES OR
7 CONSTRUCTION SERVICES PURSUANT TO THE PROCEDURES PRESCRIBED IN THIS SECTION.

8 C. IN A PROCUREMENT PURSUANT TO THIS SECTION:

9 1. THE FOLLOWING REQUIREMENTS APPLY:

10 (a) THE PURCHASING AGENCY AND THE SELECTION COMMITTEE SHALL NOT
11 REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT
12 ANY POINT IN THE SELECTION PROCESS UNDER THIS SUBSECTION OR UNDER SUBSECTION
13 D OF THIS SECTION, INCLUDING THE SELECTION OF PERSONS OR FIRMS TO BE
14 INTERVIEWED, THE SELECTION OF PERSONS OR FIRMS TO BE ON A FINAL LIST, IN
15 DETERMINING THE ORDER OF PREFERENCE OF PERSONS OR FIRMS ON A FINAL LIST OR
16 FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS.

17 (b) IN DETERMINING THE PERSONS OR FIRMS TO PARTICIPATE IN ANY
18 INTERVIEWS AND IN DETERMINING THE PERSONS AND FIRMS TO BE ON A FINAL LIST AND
19 THEIR ORDER ON A FINAL LIST, THE SELECTION COMMITTEE SHALL USE AND SHALL
20 CONSIDER ONLY THE CRITERIA AND WEIGHTING OF CRITERIA SPECIFIED BY THE
21 PURCHASING AGENCY FOR THAT PURPOSE AS PROVIDED IN THIS SUBSECTION. NO OTHER
22 FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION, DETERMINATIONS AND OTHER
23 ACTIONS.

24 (c) IF THE PURCHASING AGENCY ENTERS INTO THE NUMBER OF MULTIPLE
25 CONTRACTS BEING PROCURED FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR
26 PROFESSIONAL SERVICES, A PROCUREMENT UNDER THIS SECTION ENDS. AFTER THAT
27 TIME THE PURCHASING AGENCY MAY NOT USE THE PROCUREMENT OR ANY EXISTING FINAL
28 LIST IN THE PROCUREMENT AS THE BASIS FOR ENTERING INTO A REPLACEMENT CONTRACT
29 WITH ANY OTHER PERSON OR FIRM THAT PARTICIPATED IN THE PROCUREMENT.

30 (d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION SPECIFYING THE
31 NUMBER OF PERSONS OR FIRMS TO BE INTERVIEWED, THE NUMBER OF PERSONS OR FIRMS
32 TO BE ON A FINAL LIST OR ANY OTHER NUMERICAL SPECIFICATION IN THIS SECTION:

33 (i) IF A SMALLER NUMBER OF PERSONS OR FIRMS RESPOND TO THE REQUEST FOR
34 QUALIFICATIONS OR IF ONE OR MORE PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT
35 SO THAT THERE IS A SMALLER NUMBER OF PERSONS OR FIRMS PARTICIPATING IN THE
36 PROCUREMENT, THE PURCHASING AGENCY, AS THE PURCHASING AGENCY DETERMINES
37 NECESSARY OR APPROPRIATE, MAY ELECT TO PROCEED WITH THE PROCUREMENT WITH THE
38 PARTICIPATING PERSONS OR FIRMS IF THERE ARE AT LEAST TWO PARTICIPATING
39 RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS. ALTERNATIVELY, THE PURCHASING
40 AGENCY MAY ELECT TO TERMINATE THE PROCUREMENT.

41 (ii) AS TO A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES OR
42 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE NEGOTIATED PURSUANT TO
43 SUBSECTION E OF THIS SECTION ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE
44 PERSON OR FIRM RESPONDS TO THE REQUEST FOR QUALIFICATIONS OR IF ONE OR MORE
45 PERSONS OR FIRMS DROP OUT OF THE PROCUREMENT SO THAT ONLY ONE RESPONSIVE AND

1 RESPONSIBLE PERSON OR FIRM REMAINS IN THE PROCUREMENT, THE DIRECTOR MAY ELECT
2 TO PROCEED WITH THE PROCUREMENT WITH ONLY ONE PERSON OR FIRM IF THE DIRECTOR
3 DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF
4 THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS
5 OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME
6 FOR A RESOLICITATION.

7 (iii) IF A PERSON OR FIRM ON A FINAL LIST WITHDRAWS OR IS REMOVED FROM
8 THE PROCUREMENT AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE BEST
9 INTEREST OF THIS STATE, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON OR
10 FIRM ON THE FINAL LIST WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
11 QUALIFICATIONS IN THE PROCUREMENT AND THAT IS SELECTED BY THE SELECTION
12 COMMITTEE AS THE NEXT MOST QUALIFIED.

13 2. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR
14 EACH PROCUREMENT AND GIVE ADEQUATE PUBLIC NOTICE OF THE REQUEST FOR
15 QUALIFICATIONS IN THE SAME MANNER AS PROVIDED IN SECTION 41-2533. THE
16 PUBLICATION SHALL INCLUDE THE FACT THAT MULTIPLE CONTRACTS MAY OR WILL BE
17 AWARDED, SHALL STATE THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND
18 SHALL DESCRIBE THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
19 CONSTRUCTION SERVICES TO BE PERFORMED UNDER EACH CONTRACT. THE REQUEST FOR
20 QUALIFICATIONS SHALL:

21 (a) STATE THE FOLLOWING INFORMATION ABOUT THE CONTRACTS THAT MAY OR
22 WILL BE AWARDED:

23 (i) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
24 THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO
25 SEPARATE PERSONS OR FIRMS, THAT MULTIPLE CONTRACTS FOR THE SAME
26 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES MAY OR WILL BE AWARDED, THE
27 NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED, THE SERVICES TO BE PERFORMED
28 UNDER EACH OF THE MULTIPLE CONTRACTS AND THAT EACH OF THE MULTIPLE CONTRACTS
29 WILL BE AWARDED TO A SEPARATE PERSON OR FIRM.

30 (ii) IF THE REQUEST FOR QUALIFICATIONS IS FOR MULTIPLE CONTRACTS FOR
31 PROFESSIONAL SERVICES, THAT MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES MAY
32 OR WILL BE AWARDED, THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED, THE
33 SERVICES TO BE PERFORMED UNDER EACH OF THE MULTIPLE CONTRACTS AND EITHER THAT
34 EACH OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO A SEPARATE PERSON OR FIRM
35 OR THAT ALL OF THE MULTIPLE CONTRACTS WILL BE AWARDED TO THE SAME PERSON OR
36 FIRM.

37 (b) STATE AS TO FINAL LISTS:

38 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
39 TO BE AWARDED TO A SINGLE PERSON OR FIRM, THAT THERE WILL BE A SINGLE FINAL
40 LIST OF THREE PERSONS OR FIRMS.

41 (ii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR THE SAME
42 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
43 OR FIRMS, THAT THERE WILL BE A SINGLE FINAL LIST AND THE NUMBER OF PERSONS OR
44 FIRMS ON THE FINAL LIST, WHICH SHALL BE THE SUM OF THE NUMBER OF CONTRACTS

1 THAT MAY OR WILL BE AWARDED AND A NUMBER THAT IS DETERMINED BY THE PURCHASING
2 AGENCY AND THAT IS NOT MORE THAN FIVE.

3 (iii) IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR PROFESSIONAL
4 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, THAT THERE WILL BE A
5 SEPARATE FINAL LIST FOR EACH CONTRACT AND THAT THE NUMBER OF PERSONS OR FIRMS
6 ON EACH FINAL LIST WILL BE THREE.

7 (c) AS PRESCRIBED BELOW, STATE THE SELECTION CRITERIA AND RELATIVE
8 WEIGHT OF THE SELECTION CRITERIA TO BE USED BY THE SELECTION COMMITTEE,
9 EXCEPT THAT IN A PROCUREMENT FOR MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
10 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS ONE OF THE
11 CRITERIA SHALL BE THE PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR
12 PROCEDURES TO IMPLEMENT THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN:

13 (i) IF INTERVIEWS WILL BE HELD, THE REQUEST FOR QUALIFICATIONS SHALL
14 STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO
15 BE USED IN SELECTING THE PERSONS OR FIRMS TO BE INTERVIEWED AND THE REQUEST
16 FOR QUALIFICATIONS MAY STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
17 THE SELECTION CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON EACH
18 FINAL LIST AND IN DETERMINING THEIR ORDER ON EACH FINAL LIST. THE FINAL LIST
19 SELECTION CRITERIA AND RELATIVE WEIGHTS MAY BE DIFFERENT THAN THE SELECTION
20 CRITERIA AND RELATIVE WEIGHTS USED TO DETERMINE THE PERSONS OR FIRMS TO BE
21 INTERVIEWED.

22 (ii) IF INTERVIEWS WILL NOT BE HELD, THE REQUEST FOR QUALIFICATIONS
23 SHALL STATE THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
24 CRITERIA TO BE USED IN SELECTING THE PERSONS OR FIRMS ON EACH FINAL LIST AND
25 IN DETERMINING THEIR ORDER ON EACH FINAL LIST.

26 (d) IF THE PURCHASING AGENCY WILL HOLD INTERVIEWS AS PART OF THE
27 SELECTION PROCESS:

28 (i) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
29 TO BE AWARDED TO THE SAME PERSON OR FIRM, STATE THAT INTERVIEWS WILL BE HELD
30 AND THAT THE INTERVIEWS WILL BE WITH AT LEAST THREE BUT NOT MORE THAN FIVE
31 PERSONS OR FIRMS.

32 (ii) IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR THE SAME
33 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS
34 OR FIRMS OR IN A PROCUREMENT OF MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
35 TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, STATE THAT INTERVIEWS WILL BE
36 HELD AND THAT THE INTERVIEWS WILL BE WITH A SPECIFIED NUMBER OF PERSONS OR
37 FIRMS. THE SPECIFIED NUMBER SHALL BE STATED IN THE REQUEST FOR
38 QUALIFICATIONS, SHALL BE DETERMINED BY THE PURCHASING AGENCY AND SHALL BE THE
39 SUM OF THE NUMBER OF CONTRACTS THAT MAY OR WILL BE AWARDED AND A NUMBER THAT
40 IS DETERMINED BY THE PURCHASING AGENCY AND THAT IS NOT MORE THAN FIVE.

41 (e) FOR PROCUREMENTS OF MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
42 CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS, INCLUDE
43 EITHER:

44 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
45 SUBCONTRACTOR SELECTION PLAN AND A REQUIREMENT THAT THE PROPOSED

1 SUBCONTRACTOR SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON
2 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
3 SHALL NOT SELECT SUBCONTRACTORS BASED ON PRICE ALONE.

4 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE PURCHASING AGENCY
5 THAT APPLIES TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE
6 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS
7 TO BE SELECTED BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION OF
8 QUALIFICATIONS AND PRICE AND NOT BASED ON PRICE ALONE AND A REQUIREMENT THAT
9 EACH PERSON OR FIRM MUST SUBMIT A DESCRIPTION OF THE PROCEDURES IT PROPOSES
10 TO USE TO IMPLEMENT THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN.

11 (f) INCLUDE A DESCRIPTION OF THE PUBLICLY AVAILABLE LOCATION OF THE
12 PURCHASING AGENCY'S PROTEST POLICY AND PROCEDURES OR, IF THE PURCHASING
13 AGENCY DOES NOT HAVE A PROTEST POLICY AND PROCEDURES, A STATEMENT THAT THE
14 PROTEST POLICY AND PROCEDURES REFERRED TO IN SUBSECTION J OF THIS SECTION
15 APPLY TO ANY PROTESTS IN CONNECTION WITH THE PROCUREMENT.

16 3. THE DIRECTOR OR HEAD OF THE PURCHASING AGENCY SHALL INITIATE AN
17 APPROPRIATELY QUALIFIED SELECTION COMMITTEE FOR EACH REQUEST FOR
18 QUALIFICATIONS. THE DIRECTOR OR HEAD OF THE PURCHASING AGENCY SHALL ENSURE
19 THAT THE SELECTION COMMITTEE MEMBERS ARE COMPETENT TO SERVE ON THE SELECTION
20 COMMITTEE. THE SAME SELECTION COMMITTEE SHALL FUNCTION AS TO ALL OF THE
21 MULTIPLE CONTRACTS INCLUDED IN THE PROCUREMENT. IF THE PURCHASING AGENCY IS
22 PROCURING MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES, THE PURCHASING AGENCY
23 SHALL DETERMINE THE NUMBER AND QUALIFICATIONS OF THE SELECTION COMMITTEE
24 MEMBERS. A SELECTION COMMITTEE FOR THE PROCUREMENT OF MULTIPLE CONTRACTS FOR
25 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL HAVE NOT MORE THAN SEVEN
26 MEMBERS AND SHALL INCLUDE AT LEAST ONE PERSON WHO IS A SENIOR MANAGEMENT
27 EMPLOYEE OF A LICENSED CONTRACTOR AND ONE PERSON WHO IS AN ARCHITECT OR
28 ENGINEER REGISTERED PURSUANT TO SECTION 32-121. THESE MEMBERS MAY BE
29 EMPLOYEES OF THE PURCHASING AGENCY OR OUTSIDE CONSULTANTS. OUTSIDE
30 CONTRACTORS, ARCHITECTS AND ENGINEERS SERVING ON A SELECTION COMMITTEE ARE
31 NOT ENTITLED TO RECEIVE COMPENSATION FROM THE PURCHASING AGENCY FOR
32 PERFORMING THIS SERVICE, BUT THE PURCHASING AGENCY MAY ELECT TO REIMBURSE
33 OUTSIDE CONTRACTORS, ARCHITECTS AND ENGINEERS FOR TRAVEL, LODGING AND OTHER
34 EXPENSES INCURRED IN CONNECTION WITH SERVICE ON A SELECTION COMMITTEE. A
35 PERSON WHO IS A MEMBER OF A SELECTION COMMITTEE SHALL NOT BE A CONTRACTOR
36 UNDER A CONTRACT AWARDED UNDER THE PROCUREMENT OR PROVIDE ANY PROFESSIONAL
37 SERVICES, CONSTRUCTION, CONSTRUCTION SERVICES, MATERIALS OR OTHER SERVICES
38 UNDER THE CONTRACT. THE SELECTION COMMITTEE AND THE PURCHASING AGENCY SHALL
39 DO THE FOLLOWING:

40 (a) IF INTERVIEWS ARE SPECIFIED IN THE REQUEST FOR QUALIFICATIONS:

41 (i) THE SELECTION COMMITTEE SHALL DETERMINE THE PERSONS OR FIRMS TO BE
42 INTERVIEWED BY EVALUATING THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE
43 DATA THAT ARE SUBMITTED IN RESPONSE TO THE PURCHASING AGENCY'S REQUEST FOR
44 QUALIFICATIONS BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF

1 THE SELECTION CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS TO BE USED TO
2 DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

3 (ii) IF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION
4 CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSONS OR FIRMS
5 ON A FINAL LIST AND TO DETERMINE THEIR ORDER ON A FINAL LIST ARE NOT INCLUDED
6 IN THE REQUEST FOR QUALIFICATIONS, BEFORE THE INTERVIEWS ARE HELD THE
7 PURCHASING AGENCY SHALL DISTRIBUTE TO THE PERSONS OR FIRMS TO BE INTERVIEWED
8 THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE SELECTION CRITERIA TO BE
9 USED TO SELECT THE PERSONS OR FIRMS ON EACH FINAL LIST AND TO DETERMINE THEIR
10 ORDER ON EACH FINAL LIST. THESE SELECTION CRITERIA AND RELATIVE WEIGHT MAY
11 BE DIFFERENT THAN THE SELECTION CRITERIA AND RELATIVE WEIGHT USED TO
12 DETERMINE THE PERSONS OR FIRMS TO BE INTERVIEWED.

13 (iii) THE SELECTION COMMITTEE SHALL CONDUCT INTERVIEWS WITH THE NUMBER
14 OF PERSONS OR FIRMS TO BE INTERVIEWED AS STATED IN THE REQUEST FOR
15 QUALIFICATIONS REGARDING THE PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING
16 CONSTRUCTION SERVICES AND THE RELATIVE METHODS OF APPROACH FOR FURNISHING THE
17 REQUIRED PROFESSIONAL SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION
18 SERVICES.

19 (b) BASED ONLY ON THE SELECTION CRITERIA AND RELATIVE WEIGHT OF THE
20 SELECTION CRITERIA SPECIFIED AS PROVIDED IN THIS SECTION FOR SELECTION OF THE
21 PERSONS OR FIRMS ON EACH FINAL LIST AND THEIR ORDER ON EACH FINAL LIST, THE
22 SELECTION COMMITTEE SHALL SELECT THE PERSONS OR FIRMS FOR EACH FINAL LIST AND
23 IN THE CASE OF A FINAL LIST OR FINAL LISTS FOR MULTIPLE CONTRACTS THAT WILL
24 BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, RANK THE PERSONS OR FIRMS
25 ON EACH FINAL LIST IN ORDER OF PREFERENCE. IF THE PROCUREMENT IS FOR
26 MULTIPLE CONTRACTS TO BE AWARDED TO SEPARATE PERSONS OR FIRMS AND IF A PERSON
27 OR FIRM SUBMITTED QUALIFICATIONS FOR MORE THAN ONE CONTRACT, THE PERSON OR
28 FIRM MAY BE ON MORE THAN ONE FINAL LIST.

29 (c) BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE
30 HIGHEST RANKING PERSON OR FIRM ON EACH FINAL LIST THAT IT IS THE HIGHEST
31 RANKING PERSON OR FIRM ON THAT FINAL LIST, THE PURCHASING AGENCY SHALL NOTIFY
32 EACH OF THE FOLLOWING THAT IT IS NOT THE HIGHEST PERSON OR FIRM ON THAT FINAL
33 LIST OR THAT ANOTHER PERSON OR FIRM IS THE HIGHEST RANKING PERSON OR FIRM ON
34 THAT FINAL LIST:

35 (i) IF INTERVIEWS WERE HELD, THE OTHER PERSONS AND FIRMS INTERVIEWED
36 FOR THAT FINAL LIST.

37 (ii) IF INTERVIEWS WERE NOT HELD, THE OTHER PERSONS AND FIRMS THAT
38 MADE SUBMITTALS FOR THAT FINAL LIST.

39 (d) FOR EACH FINAL LIST THE SELECTION COMMITTEE SHALL COMPLETE A
40 CONSOLIDATED SCORING SHEET SHOWING ALL PERSONS OR FIRMS THAT WERE INTERVIEWED
41 OR, IF NO INTERVIEWS WERE HELD, SHOWING ALL PERSONS OR FIRMS THAT SUBMITTED
42 QUALIFICATIONS, SHOWING THE FINAL RANK OR SCORE FOR EACH PERSON OR FIRM AS TO
43 EACH SELECTION CRITERIA, SHOWING THE FINAL OVERALL RANK OR SCORE FOR EACH
44 PERSON OR FIRM AND PRESCRIBING THE CRITERIA AND RELATIVE WEIGHT OF THE

1 CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND THEIR
2 ORDER ON THE FINAL LIST

3 D. THE PURCHASING AGENCY SHALL AWARD MULTIPLE CONTRACTS SPECIFIED IN
4 THE REQUEST FOR QUALIFICATIONS AS PROVIDED IN SUBSECTION E OR F OF THIS
5 SECTION.

6 E. THE PROCUREMENT OFFICER SHALL CONDUCT NEGOTIATIONS WITH PERSONS OR
7 FIRMS ON THE FINAL LIST OR FINAL LISTS. THE NEGOTIATIONS SHALL INCLUDE
8 CONSIDERATION OF COMPENSATION AND OTHER CONTRACT TERMS THAT THE PROCUREMENT
9 OFFICER DETERMINES TO BE FAIR AND REASONABLE TO THIS STATE. IN MAKING THIS
10 DECISION, THE PROCUREMENT OFFICER SHALL TAKE INTO ACCOUNT THE ESTIMATED
11 VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF THE PROFESSIONAL SERVICES
12 OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE RENDERED. IF IN A
13 PROCUREMENT UNDER THIS SECTION THE PROCUREMENT OFFICER TERMINATES
14 NEGOTIATIONS WITH A PERSON OR FIRM ON A FINAL LIST AND COMMENCES NEGOTIATIONS
15 WITH ANOTHER PERSON OR FIRM ON THAT FINAL LIST, THE PROCUREMENT OFFICER SHALL
16 NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR ENTER INTO A CONTRACT FOR
17 THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR PROFESSIONAL SERVICES
18 COVERED BY THAT FINAL LIST WITH ANY PERSON OR FIRM ON THAT FINAL LIST WITH
19 WHOM THE PROCUREMENT OFFICER HAS TERMINATED NEGOTIATIONS. IF THE PROCUREMENT
20 IS FOR MULTIPLE CONTRACTS FOR:

21 1. PROFESSIONAL SERVICES TO BE AWARDED TO A SINGLE PERSON OR FIRM,
22 THERE IS ONE FINAL LIST AND THE PROCUREMENT OFFICER SHALL ENTER INTO
23 NEGOTIATIONS WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL LIST. IF
24 THE PROCUREMENT OFFICER IS NOT ABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH
25 THE HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL LIST, AT COMPENSATION AND
26 ON OTHER CONTRACT TERMS THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND
27 REASONABLE, THE PROCUREMENT OFFICER SHALL THEN UNDERTAKE NEGOTIATIONS WITH
28 THE NEXT MOST QUALIFIED PERSON OR FIRM ON THE FINAL LIST IN SEQUENCE UNTIL AN
29 AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO REJECT ALL PERSONS OR
30 FIRMS ON THE FINAL LIST.

31 2. THE SAME JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES TO BE AWARDED
32 TO SEPARATE PERSONS OR FIRMS, THERE IS ONE FINAL LIST AND THE PROCUREMENT
33 OFFICER SHALL ENTER INTO SEPARATE NEGOTIATIONS FOR CONTRACTS WITH THE NUMBER
34 OF THE HIGHEST QUALIFIED PERSONS OR FIRMS ON THE FINAL LIST EQUAL TO THE
35 NUMBER OF CONTRACTS TO BE AWARDED. IF THE PROCUREMENT OFFICER IS NOT ABLE TO
36 NEGOTIATE A SATISFACTORY CONTRACT WITH A PERSON OR FIRM WITH WHOM THE
37 PROCUREMENT OFFICER HAS COMMENCED NEGOTIATIONS, THE PROCUREMENT OFFICER SHALL
38 FORMALLY TERMINATE NEGOTIATIONS WITH THAT PERSON OR FIRM. THE PROCUREMENT
39 OFFICER SHALL THEN UNDERTAKE NEGOTIATIONS FOR A CONTRACT WITH THE NEXT MOST
40 QUALIFIED PERSON OR FIRM ON THE FINAL LIST WITH WHOM THE PROCUREMENT OFFICER
41 IS NOT THEN NEGOTIATING AND WITH WHOM THE PROCUREMENT OFFICER HAS NOT
42 PREVIOUSLY NEGOTIATED IN SEQUENCE UNTIL AN AGREEMENT IS REACHED FOR SOME OR
43 ALL OF THE MULTIPLE CONTRACTS INCLUDED IN THE REQUEST FOR QUALIFICATIONS OR A
44 DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST.

1 3. PROFESSIONAL SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS,
2 THERE IS A SEPARATE FINAL LIST FOR EACH CONTRACT AND THE PROCUREMENT OFFICER
3 SHALL ENTER INTO SEPARATE NEGOTIATIONS WITH THE HIGHEST QUALIFIED PERSON OR
4 FIRM ON EACH FINAL LIST. IF THE PROCUREMENT OFFICER IS NOT ABLE TO NEGOTIATE
5 A SATISFACTORY CONTRACT WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON A FINAL
6 LIST, AT COMPENSATION AND ON OTHER CONTRACT TERMS THE PROCUREMENT OFFICER
7 DETERMINES TO BE FAIR AND REASONABLE, THE PROCUREMENT OFFICER SHALL FORMALLY
8 TERMINATE NEGOTIATIONS WITH THAT PERSON OR FIRM. THE PROCUREMENT OFFICER
9 SHALL THEN UNDERTAKE NEGOTIATIONS WITH THE NEXT MOST QUALIFIED PERSON OR FIRM
10 ON THAT FINAL LIST IN SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A
11 DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON THAT FINAL LIST.

12 F. AS AN ALTERNATIVE TO SUBSECTION E OF THIS SECTION, THE PURCHASING
13 AGENCY MAY AWARD MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION
14 SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS AS FOLLOWS:

15 1. THE PURCHASING AGENCY SHALL USE THE SELECTION COMMITTEE APPOINTED
16 FOR THE REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

17 2. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR PROPOSALS TO THE
18 PERSONS OR FIRMS ON THE FINAL LIST DEVELOPED PURSUANT TO SUBSECTION C OF THIS
19 SECTION.

20 3. THE REQUEST FOR PROPOSALS SHALL INCLUDE:

21 (a) THE PURCHASING AGENCY'S PROJECT SCHEDULE AND PROJECT FINAL BUDGET
22 FOR DESIGN AND CONSTRUCTION OR LIFE CYCLE BUDGET FOR A PROCUREMENT THAT
23 INCLUDES MAINTENANCE SERVICES OR OPERATIONS SERVICES.

24 (b) A STATEMENT THAT THE CONTRACT OR CONTRACTS WILL BE AWARDED TO A
25 SPECIFIED NUMBER OF OFFERORS WHOSE PROPOSALS RECEIVE THE HIGHEST NUMBER OF
26 POINTS UNDER A SCORING METHOD. THE SPECIFIED NUMBER OF OFFERORS WILL BE THE
27 NUMBER OF CONTRACTS INCLUDED IN THE PROCUREMENT.

28 (c) A DESCRIPTION OF THE SCORING METHOD, INCLUDING A LIST OF THE
29 FACTORS IN THE SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH
30 FACTOR. THE FACTORS IN THE SCORING METHOD SHALL INCLUDE:

31 (i) OFFEROR QUALIFICATIONS.

32 (ii) OFFEROR FINANCIAL CAPACITY.

33 (iii) COMPLIANCE WITH THE PURCHASING AGENCY'S PROJECT SCHEDULE.

34 (iv) THE PRICE OR LIFE CYCLE PRICE FOR PROCUREMENTS THAT INCLUDE
35 MAINTENANCE SERVICES, OPERATIONS SERVICES OR FINANCE SERVICES.

36 (v) AN OFFEROR QUALITY MANAGEMENT PLAN.

37 (vi) OTHER EVALUATION FACTORS AS DETERMINED BY THE PURCHASING AGENCY,
38 IF ANY.

39 (d) A REQUIREMENT THAT EACH OFFEROR SUBMIT SEPARATELY A TECHNICAL
40 PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE
41 RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

42 (e) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION
43 COMMITTEE WILL SEPARATELY EVALUATE THE TECHNICAL PROPOSAL AND THE PRICE
44 PROPOSAL AND WILL EVALUATE AND SCORE THE TECHNICAL PROPOSAL BEFORE OPENING
45 THE PRICE PROPOSAL.

1 (f) IF THE PURCHASING AGENCY CONDUCTS DISCUSSIONS PURSUANT TO
2 PARAGRAPH 5 OF THIS SUBSECTION, A STATEMENT THAT DISCUSSIONS WILL BE HELD AND
3 A REQUIREMENT THAT EACH OFFEROR SUBMIT A PRELIMINARY TECHNICAL PROPOSAL
4 BEFORE THE DISCUSSIONS ARE HELD.

5 4. IF THE PURCHASING AGENCY DETERMINES TO CONDUCT DISCUSSIONS PURSUANT
6 TO PARAGRAPH 5 OF THIS SUBSECTION, EACH OFFEROR SHALL SUBMIT A PRELIMINARY
7 TECHNICAL PROPOSAL TO THE PURCHASING AGENCY BEFORE THOSE DISCUSSIONS ARE
8 HELD.

9 5. IF DETERMINED BY THE PURCHASING AGENCY AND INCLUDED BY THE
10 PURCHASING AGENCY IN THE REQUEST FOR PROPOSALS, THE SELECTION COMMITTEE SHALL
11 CONDUCT DISCUSSIONS WITH ALL PERSONS OR FIRMS THAT SUBMIT PRELIMINARY
12 TECHNICAL PROPOSALS. DISCUSSIONS SHALL BE FOR THE PURPOSE OF CLARIFICATION
13 TO ENSURE FULL UNDERSTANDING OF, AND RESPONSIVENESS TO, THE SOLICITATION
14 REQUIREMENTS. OFFERORS SHALL BE ACCORDED FAIR TREATMENT WITH RESPECT TO ANY
15 OPPORTUNITY FOR DISCUSSION AND FOR CLARIFICATION BY THE PURCHASING AGENCY.
16 REVISION OF PRELIMINARY TECHNICAL PROPOSALS SHALL BE PERMITTED AFTER
17 SUBMISSION OF PRELIMINARY TECHNICAL PROPOSALS AND BEFORE AWARD FOR THE
18 PURPOSE OF OBTAINING BEST AND FINAL PROPOSALS. IN CONDUCTING ANY
19 DISCUSSIONS, INFORMATION DERIVED FROM PROPOSALS SUBMITTED BY COMPETING
20 OFFERORS SHALL NOT BE DISCLOSED TO OTHER COMPETING OFFERORS.

21 6. AFTER COMPLETION OF ANY DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
22 SUBSECTION OR IF NO DISCUSSIONS ARE HELD, EACH OFFEROR SHALL SEPARATELY
23 SUBMIT THE OFFEROR'S FINAL TECHNICAL PROPOSAL AND ITS PRICE PROPOSAL.

24 7. BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION COMMITTEE SHALL
25 OPEN THE FINAL TECHNICAL PROPOSALS, EVALUATE THE FINAL TECHNICAL PROPOSALS
26 AND SCORE THE FINAL TECHNICAL PROPOSALS USING THE SCORING METHOD IN THE
27 REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE
28 EVALUATION AND SCORING.

29 8. AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
30 TECHNICAL PROPOSALS, THE SELECTION COMMITTEE SHALL OPEN THE PRICE PROPOSALS,
31 EVALUATE THE PRICE PROPOSALS, SCORE THE PRICE PROPOSALS AND COMPLETE THE
32 SCORING OF THE ENTIRE PROPOSALS USING THE SCORING METHOD IN THE REQUEST FOR
33 PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND
34 SCORING. THE SELECTION COMMITTEE SHALL COMPLETE A CONSOLIDATED SCORING SHEET
35 SHOWING FOR EACH PERSON OR FIRM THAT SUBMITTED A PROPOSAL ITS FINAL SCORE FOR
36 EACH FACTOR IN THE SCORING METHOD INCLUDED IN THE REQUEST FOR PROPOSALS AND
37 ITS FINAL OVERALL SCORE. THE CONSOLIDATED SCORING SHEET SHALL ALSO INCLUDE
38 THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE SCORING
39 METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS INCLUDED IN
40 THE REQUEST FOR PROPOSALS.

41 9. THE PURCHASING AGENCY SHALL AWARD THE CONTRACTS TO THE NUMBER OF
42 RESPONSIVE AND RESPONSIBLE OFFERORS SPECIFIED IN THE REQUEST FOR PROPOSALS
43 WHOSE PROPOSALS RECEIVE THE HIGHEST SCORES UNDER THE METHOD OF SCORING IN THE
44 REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE
45 EVALUATION. BEFORE OR AT THE SAME TIME AS THE PURCHASING AGENCY NOTIFIES THE

1 WINNING OFFEROR THAT IT HAS WON, THE PURCHASING AGENCY SHALL NOTIFY EACH
2 OTHER OFFEROR EITHER THAT THE OFFEROR HAS NOT WON OR THAT ANOTHER OFFEROR HAS
3 WON.

4 10. THE CONTRACT OR CONTRACTS FILE SHALL CONTAIN THE BASIS ON WHICH THE
5 AWARD IS MADE, INCLUDING AT A MINIMUM THE INFORMATION AND DOCUMENTS REQUIRED
6 UNDER SUBSECTION G OF THIS SECTION.

7 G. IF THE PROCUREMENT HAS MULTIPLE FINAL LISTS UNDER SUBSECTION C OF
8 THIS SECTION, THE PURCHASING AGENCY SHALL RETAIN THE ITEMS IN PARAGRAPH 1 OF
9 THIS SUBSECTION AS TO EACH FINAL LIST. AT A MINIMUM, THE PURCHASING AGENCY
10 SHALL RETAIN THE FOLLOWING FOR EACH PROCUREMENT UNDER THIS SECTION:

11 1. AS TO EACH FINAL LIST UNDER EACH REQUEST FOR QUALIFICATIONS
12 PROCUREMENT PROCESS UNDER SUBSECTION C OF THIS SECTION:

13 (a) IF INTERVIEWS WERE NOT HELD:

14 (i) THE SUBMITTAL OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL LIST
15 AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE PURCHASING AGENCY
16 ENTERS INTO A CONTRACT.

17 (ii) THE FINAL LIST.

18 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
19 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
20 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

21 (iv) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
22 THAT SUBMITTED QUALIFICATIONS ITS SCORE OR RANK ON EACH SELECTION CRITERIA
23 AND ITS OVERALL SCORE OR RANK.

24 (b) IF INTERVIEWS WERE HELD:

25 (i) ALL SUBMITTALS OF THE PERSON OR FIRM LISTED FIRST ON THE FINAL
26 LIST AND ALL SUBMITTALS OF EACH PERSON OR FIRM WITH WHICH THE PURCHASING
27 AGENCY ENTERS INTO A CONTRACT.

28 (ii) THE FINAL LIST.

29 (iii) A LIST OF THE SELECTION CRITERIA AND RELATIVE WEIGHT OF
30 SELECTION CRITERIA USED TO SELECT THE PERSONS OR FIRMS FOR THE FINAL LIST AND
31 TO DETERMINE THEIR ORDER ON THE FINAL LIST.

32 (iv) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
33 THAT WAS INTERVIEWED ITS SCORE OR RANK ON EACH SELECTION CRITERIA AND ITS
34 OVERALL SCORE OR RANK.

35 2. FOR EACH REQUEST FOR PROPOSALS PROCUREMENT PROCESS UNDER SUBSECTION
36 F OF THIS SECTION:

37 (a) THE ENTIRE PROPOSAL SUBMITTED BY THE PERSON OR FIRM THAT RECEIVED
38 THE HIGHEST SCORE IN THE SCORING METHOD IN THE REQUEST FOR PROPOSALS AND THE
39 ENTIRE PROPOSAL SUBMITTED BY EACH PERSON OR FIRM WITH WHICH THE PURCHASING
40 AGENCY ENTERS INTO A CONTRACT.

41 (b) THE DESCRIPTION OF THE SCORING METHOD, THE LIST OF FACTORS IN THE
42 SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH FACTOR, ALL AS
43 INCLUDED IN THE REQUEST FOR PROPOSALS.

1 (c) THE CONSOLIDATED SCORING SHEET SHOWING FOR EACH PERSON OR FIRM
2 THAT SUBMITTED A PROPOSAL ITS FINAL SCORE FOR EACH FACTOR IN THE SCORING
3 METHOD INCLUDED IN THE REQUEST FOR PROPOSALS AND ITS FINAL OVERALL SCORE.

4 H. INFORMATION RELATING TO EACH PROCUREMENT UNDER THIS SECTION SHALL
5 BE MADE AVAILABLE TO THE PUBLIC AS FOLLOWS:

6 1. UNTIL CONTRACT AWARD BY A PURCHASING AGENCY OF ALL OF THE MULTIPLE
7 CONTRACTS IN THE PROCUREMENT OR TERMINATION OF THE PROCUREMENT BY THE
8 PURCHASING AGENCY, ONLY THE NAME OF EACH PERSON OR FIRM ON THE FINAL LIST
9 DEVELOPED PURSUANT TO SUBSECTION C OF THIS SECTION MAY BE MADE AVAILABLE TO
10 THE PUBLIC AND ALL OTHER INFORMATION RECEIVED BY THE PURCHASING AGENCY IN
11 RESPONSE TO THE REQUEST FOR QUALIFICATIONS UNDER SUBSECTION C OF THIS SECTION
12 OR CONTAINED IN PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
13 BE CONFIDENTIAL IN ORDER TO AVOID DISCLOSURE OF THE CONTENTS THAT MAY BE
14 PREJUDICIAL TO COMPETING SUBMITTERS AND OFFERORS DURING THE SELECTION
15 PROCESS.

16 2. AFTER THE PURCHASING AGENCY AWARDS ALL OF THE MULTIPLE CONTRACTS IN
17 THE PROCUREMENT OR TERMINATES THE PROCUREMENT, THE PURCHASING AGENCY SHALL
18 MAKE AVAILABLE TO THE PUBLIC ALL OF THE ITEMS THAT THE PURCHASING AGENCY IS
19 REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS SECTION, EXCEPT THE PROPOSALS
20 SUBMITTED IN RESPONSE TO A REQUEST FOR PROPOSALS UNDER SUBSECTION F OF THIS
21 SECTION.

22 3. THE PROPOSALS SUBMITTED UNDER SUBSECTION F OF THIS SECTION SHALL
23 NOT BE MADE AVAILABLE TO THE PUBLIC UNTIL AFTER THE PURCHASING AGENCY HAS
24 ENTERED INTO A CONTRACT FOR ALL OF THE MULTIPLE CONTRACTS IN THE PROCUREMENT
25 OR THE PURCHASING AGENCY HAS TERMINATED THE PROCUREMENT. THE PROPOSALS
26 SUBMITTED UNDER SUBSECTION F OF THIS SECTION THAT THE PURCHASING AGENCY IS
27 REQUIRED TO RETAIN UNDER SUBSECTION G OF THIS SECTION SHALL BE MADE AVAILABLE
28 TO THE PUBLIC AFTER THE PURCHASING AGENCY HAS ENTERED INTO A CONTRACT FOR ALL
29 OF THE CONTRACTS IN THE PROCUREMENT OR THE PURCHASING AGENCY HAS TERMINATED
30 THE PROCUREMENT.

31 4. TO THE EXTENT THAT THE OFFEROR DESIGNATES AND THE PURCHASING AGENCY
32 CONCURS, TRADE SECRETS AND OTHER PROPRIETARY DATA CONTAINED IN A PROPOSAL
33 REMAIN CONFIDENTIAL.

34 I. THE PURCHASING AGENCY MAY CANCEL A REQUEST FOR QUALIFICATIONS OR A
35 REQUEST FOR PROPOSALS, REJECT IN WHOLE OR IN PART ANY OR ALL SUBMITTALS OR
36 PROPOSALS OR DETERMINE NOT TO ENTER INTO ONE OR MORE OF THE MULTIPLE
37 CONTRACTS AS SPECIFIED IN THE SOLICITATION IF THE PURCHASING AGENCY
38 DETERMINES IN ITS ABSOLUTE AND SOLE DISCRETION THAT THE ACTION IS IN THE BEST
39 INTEREST OF THIS STATE. THE PURCHASING AGENCY SHALL MAKE THE REASONS FOR
40 CANCELLATION, REJECTION OR DETERMINATION NOT TO ENTER INTO CONTRACTS PART OF
41 THE CONTRACT FILE.

42 J. IF THE PURCHASING AGENCY DOES NOT HAVE A PROCUREMENT PROTEST POLICY
43 AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE
44 PURCHASING AGENCY, FOR PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION
45 THE PURCHASING AGENCY SHALL FOLLOW THE PROCUREMENT PROTEST POLICY AND

1 PROCEDURES OF THE DEPARTMENT. THE PURCHASING AGENCY SHALL PROCESS ALL
2 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION.

3 K. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
4 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
5 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
6 OF THOSE SERVICES.

7 41-2580. Requirements applicable to construction services and
8 professional services and to contracts for
9 construction services and professional services;
10 definition

11 A. THE REQUIREMENTS PRESCRIBED IN THIS SECTION APPLY TO EACH CONTRACT
12 ENTERED INTO AS THE RESULT OF A PROCUREMENT OF CONSTRUCTION SERVICES OR
13 PROFESSIONAL SERVICES UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578,
14 41-2579 OR 41-2581 AND TO THE PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES
15 INCLUDED IN EACH PROCUREMENT UNDER SECTION 41-2535, 41-2536, 41-2537,
16 41-2578, 41-2579 OR 41-2581.

17 B. IF A PROCUREMENT UNDER SECTION 41-2578 IS FOR
18 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
19 CONSTRUCTION SERVICES TO BE CONTRACTED PURSUANT TO SECTION 41-2578,
20 SUBSECTION E OR IF A PROCUREMENT UNDER SECTION 41-2535, 41-2536 OR 41-2537 IS
21 FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR DESIGN-BUILD
22 CONSTRUCTION SERVICES, THE PURCHASING AGENCY SHALL ENTER INTO A WRITTEN
23 CONTRACT WITH THE CONTRACTOR FOR PRECONSTRUCTION SERVICES UNDER WHICH THE
24 PURCHASING AGENCY SHALL PAY THE CONTRACTOR A FEE FOR PRECONSTRUCTION SERVICES
25 IN AN AMOUNT AGREED BY THE PURCHASING AGENCY AND THE CONTRACTOR, AND THE
26 PURCHASING AGENCY SHALL NOT REQUEST OR OBTAIN A FIXED PRICE OR A GUARANTEED
27 MAXIMUM PRICE FOR THE CONSTRUCTION FROM THE CONTRACTOR OR ENTER INTO A
28 CONSTRUCTION CONTRACT WITH THE CONTRACTOR UNTIL AFTER THE PURCHASING AGENCY
29 HAS ENTERED INTO THE WRITTEN CONTRACT FOR PRECONSTRUCTION SERVICES AND A
30 PRECONSTRUCTION SERVICES FEE.

31 C. IF A CONTRACT FOR CONSTRUCTION SERVICES IS ENTERED INTO AS THE
32 RESULT OF A PROCUREMENT UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578 OR
33 41-2579, CONSTRUCTION SHALL NOT COMMENCE UNTIL THE PURCHASING AGENCY AND
34 CONTRACTOR AGREE IN WRITING ON EITHER A FIXED PRICE THAT THE PURCHASING
35 AGENCY WILL PAY FOR THE CONSTRUCTION TO BE COMMENCED OR A GUARANTEED MAXIMUM
36 PRICE FOR THE CONSTRUCTION TO BE COMMENCED.

37 D. A CONTRACT FOR PROFESSIONAL SERVICES ENTERED INTO AS THE RESULT OF
38 A PROCUREMENT UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 OR
39 41-2581 SHALL HAVE A TERM NOT EXCEEDING FIVE YEARS AFTER THE DATE OF CONTRACT
40 AWARD BY THE PURCHASING AGENCY OF THE FIRST CONTRACT UNDER THE PROCUREMENT,
41 EXCEPT THAT THE CONTRACT MAY CONTINUE IN EFFECT AFTER THE FIVE YEAR TERM FOR
42 PROFESSIONAL SERVICES ON PROJECTS ON WHICH THE RENDERING OF PROFESSIONAL
43 SERVICES COMMENCES WITHIN THE FIVE YEAR TERM.

44 E. NOTWITHSTANDING ANY OTHER LAW:

1 1. THE CONTRACTOR FOR DESIGN-BUILD OR JOB-ORDER-CONTRACTING
2 CONSTRUCTION SERVICES IS NOT REQUIRED TO BE REGISTERED TO PERFORM DESIGN
3 SERVICES PURSUANT TO TITLE 32, CHAPTER 1 IF THE PERSON OR FIRM ACTUALLY
4 PERFORMING THE DESIGN SERVICES ON BEHALF OF THE CONTRACTOR IS APPROPRIATELY
5 REGISTERED.

6 2. THE CONTRACTOR FOR CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR
7 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL BE LICENSED TO PERFORM
8 CONSTRUCTION PURSUANT TO TITLE 32, CHAPTER 10.

9 F. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ONLY:

10 1. THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER SHALL BE ONE
11 MILLION DOLLARS OR SUCH HIGHER OR LOWER AMOUNT PRESCRIBED BY THE PURCHASING
12 AGENCY IN AN ACTION NOTICED PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 3.1 OR A
13 RULE ADOPTED BY THE PURCHASING AGENCY AS THE MAXIMUM AMOUNT OF AN INDIVIDUAL
14 JOB ORDER. REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN
15 ORDER TO CONSTITUTE A JOB ORDER THAT SATISFIES THIS REQUIREMENT.

16 2. IF THE CONTRACTOR SUBCONTRACTS OR INTENDS TO SUBCONTRACT PART OR
17 ALL OF THE WORK UNDER A JOB ORDER AND IF THE JOB-ORDER-CONTRACTING
18 CONSTRUCTION SERVICES CONTRACT INCLUDES DESCRIPTIONS OF STANDARD INDIVIDUAL
19 TASKS, STANDARD UNIT PRICES FOR STANDARD INDIVIDUAL TASKS AND PRICING OF JOB
20 ORDERS BASED ON THE NUMBER OF UNITS OF STANDARD INDIVIDUAL TASKS IN THE JOB
21 ORDER:

22 (a) THE CONTRACTOR HAS A DUTY TO DELIVER PROMPTLY TO EACH
23 SUBCONTRACTOR INVITED TO BID A COEFFICIENT TO THE CONTRACTOR TO DO ALL OR
24 PART OF THE WORK UNDER ONE OR MORE JOB ORDERS:

25 (i) A COPY OF THE DESCRIPTIONS OF ALL STANDARD INDIVIDUAL TASKS ON
26 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

27 (ii) A COPY OF THE STANDARD UNIT PRICES FOR THE INDIVIDUAL TASKS ON
28 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

29 (b) IF NOT PREVIOUSLY DELIVERED TO THE SUBCONTRACTOR, THE CONTRACTOR
30 HAS A DUTY TO DELIVER PROMPTLY THE FOLLOWING TO EACH SUBCONTRACTOR INVITED TO
31 OR THAT HAS AGREED TO DO ANY OF THE WORK INCLUDED IN ANY JOB ORDER:

32 (i) A COPY OF THE DESCRIPTION OF EACH STANDARD INDIVIDUAL TASK THAT IS
33 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

34 (ii) THE NUMBER OF UNITS OF EACH STANDARD INDIVIDUAL TASK THAT IS
35 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

36 (iii) THE STANDARD UNIT PRICE FOR EACH STANDARD INDIVIDUAL TASK THAT
37 IS INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO
38 PERFORM.

39 G. NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS SECTION OR THIS
40 TITLE, A PURCHASING AGENCY SHALL NOT:

41 1. ENTER INTO A CONTRACT AS CONTRACTOR TO PROVIDE
42 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION
43 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

44 2. CONTRACT WITH ITSELF, WITH ANOTHER PURCHASING AGENCY, WITH THIS
45 STATE OR WITH ANY OTHER GOVERNMENTAL UNIT OF THIS STATE OR THE FEDERAL

1 GOVERNMENT FOR THE PURCHASING AGENCY TO PROVIDE CONSTRUCTION-MANAGER-AT-RISK
2 CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION SERVICES OR
3 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

4 H. THE PROHIBITIONS PRESCRIBED IN SUBSECTION G OF THIS SECTION DO NOT
5 PROHIBIT A PURCHASING AGENCY FROM PROVIDING CONSTRUCTION FOR ITSELF AS
6 PROVIDED BY LAW.

7 I. THE PURCHASING AGENCY SHALL INCLUDE IN EACH CONTRACT FOR
8 CONSTRUCTION SERVICES THE FULL STREET OR PHYSICAL ADDRESS OF EACH SEPARATE
9 LOCATION AT WHICH THE CONSTRUCTION WILL BE PERFORMED AND A REQUIREMENT THAT
10 THE CONTRACTOR AND EACH SUBCONTRACTOR AT ANY LEVEL INCLUDE IN EACH OF ITS
11 SUBCONTRACTS THE SAME ADDRESS INFORMATION. THE CONTRACTOR AND EACH
12 SUBCONTRACTOR AT ANY LEVEL SHALL INCLUDE IN EACH SUBCONTRACT THE FULL STREET
13 OR PHYSICAL ADDRESS OF EACH SEPARATE LOCATION AT WHICH CONSTRUCTION WORK WILL
14 BE PERFORMED.

15 J. THE FOLLOWING PROVISIONS APPLY TO ALL CONSTRUCTION SERVICES
16 PROCURED UNDER SECTION 41-2535, 41-2536, 41-2537, 41-2578, 41-2579 OR
17 41-2581:

18 1. THE PERSON OR FIRM SELECTED TO PERFORM THE CONSTRUCTION SERVICES
19 SHALL SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION
20 OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS BASED ON
21 PRICE ALONE. A QUALIFICATIONS AND PRICE SELECTION MAY BE A SINGLE-STEP
22 SELECTION BASED ON A COMBINATION OF QUALIFICATIONS AND PRICE OR A TWO-STEP
23 SELECTION. IN A TWO-STEP SELECTION, THE FIRST STEP SHALL BE BASED ON
24 QUALIFICATIONS ALONE AND THE SECOND STEP MAY BE BASED ON A COMBINATION OF
25 QUALIFICATIONS AND PRICE OR ON PRICE ALONE.

26 2. THE PURCHASING AGENCY SHALL INCLUDE IN EACH CONTRACT:

27 (a) IF THE PURCHASING AGENCY INCLUDED ITS SUBCONTRACTOR SELECTION PLAN
28 IN THE REQUEST FOR QUALIFICATIONS, THE PURCHASING AGENCY'S SUBCONTRACTOR
29 SELECTION PLAN AND THE PROCEDURES TO IMPLEMENT THE PURCHASING AGENCY'S
30 SUBCONTRACTOR SELECTION PLAN PROPOSED BY THE SELECTED PERSON OR FIRM IN
31 SUBMITTING ITS QUALIFICATIONS WITH THOSE MODIFICATIONS TO THE PROCEDURES AS
32 THE PURCHASING AGENCY AND THE SELECTED PERSON OR FIRM AGREE.

33 (b) IF THE PURCHASING AGENCY DID NOT INCLUDE ITS SUBCONTRACTOR
34 SELECTION PLAN IN THE REQUEST FOR QUALIFICATIONS, THE SUBCONTRACTOR SELECTION
35 PLAN PROPOSED BY THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS
36 WITH THOSE MODIFICATIONS AS THE PURCHASING AGENCY AND THE SELECTED PERSON OR
37 FIRM AGREE.

38 3. IN MAKING THE SELECTION OF SUBCONTRACTORS, THE PERSON OR FIRM
39 SELECTED TO PERFORM THE CONSTRUCTION SERVICES SHALL USE THE SUBCONTRACTOR
40 SELECTION PLAN AND ANY PROCEDURES INCLUDED IN ITS CONTRACT.

41 K. FOR THE PURPOSES OF THIS SECTION, "PROFESSIONAL SERVICES" INCLUDES
42 ARCHITECT SERVICES, ENGINEER SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER
43 SERVICES, GEOLOGIST SERVICES AND LAND SURVEYING SERVICES AND ANY COMBINATION
44 OF THOSE SERVICES.

1 41-2581. Procurement of certain professional services

2 A. A PURCHASING AGENCY MAY PROCURE UNDER THIS SECTION A SINGLE
3 CONTRACT OR MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES IF THE CONTRACT IS
4 FOR PROFESSIONAL SERVICES BY AN ARCHITECT OR ARCHITECT FIRM AND THE CONTRACT
5 AMOUNT IS TWO HUNDRED FIFTY THOUSAND DOLLARS OR LESS OR IF THE CONTRACT IS
6 FOR PROFESSIONAL SERVICES BY A PERSON OR FIRM OTHER THAN AN ARCHITECT AND THE
7 CONTRACT AMOUNT IS FIVE HUNDRED THOUSAND DOLLARS OR LESS. FOR SUCH
8 PROCUREMENTS, THE DIRECTOR SHALL ENCOURAGE PERSONS OR FIRMS ENGAGED IN THE
9 LAWFUL PRACTICE OF THE PROFESSION TO SUBMIT ANNUALLY A STATEMENT OF
10 QUALIFICATIONS AND EXPERIENCE.

11 B. THE DIRECTOR OR THE HEAD OF THE PURCHASING AGENCY SHALL INITIATE AN
12 APPROPRIATELY QUALIFIED SELECTION COMMITTEE FOR EACH PROCUREMENT, WHICH MAY
13 INCLUDE ONE CONTRACT OR MULTIPLE MORE CONTRACTS, PURSUANT TO RULES ADOPTED BY
14 THE DIRECTOR OR PURCHASING AGENCY. THE SELECTION COMMITTEE SHALL EVALUATE
15 CURRENT STATEMENTS OF QUALIFICATIONS AND EXPERIENCE ON FILE WITH THE DIRECTOR
16 OR PURCHASING AGENCY, TOGETHER WITH THOSE THAT MAY BE SUBMITTED BY OTHER
17 PERSONS OR FIRMS REGARDING THE PROCUREMENT. IF POSSIBLE AND PRACTICABLE, THE
18 SELECTION COMMITTEE SHALL CONDUCT INTERVIEWS WITH AT LEAST THREE PERSONS OR
19 FIRMS REGARDING THE PROCUREMENT AND THE RELATIVE METHODS OF FURNISHING THE
20 REQUIRED SERVICES AND, IF POSSIBLE, SHALL SELECT, IN ORDER OF PREFERENCE AND
21 BASED ON CRITERIA ESTABLISHED AND PUBLISHED BY THE SELECTION COMMITTEE, A
22 SEPARATE FINAL LIST FOR EACH CONTRACT BEING PROCURED OF AT LEAST THREE OF THE
23 PERSONS OR FIRMS DEEMED TO BE THE MOST QUALIFIED TO PROVIDE THE SERVICES
24 REQUIRED OR IF MULTIPLE CONTRACTS ARE BEING PROCURED AND WILL ALL BE AWARDED
25 TO THE SAME PERSON OR FIRM, A SINGLE FINAL LIST FOR ALL THE MULTIPLE
26 CONTRACTS OF AT LEAST THREE PERSONS OR FIRMS DEEMED TO BE THE MOST QUALIFIED
27 TO PROVIDE THE SERVICES REQUIRED. THE SELECTION COMMITTEE SHALL BASE THE
28 SELECTION OF EACH FINAL LIST AND THE ORDER OF PREFERENCE ON DEMONSTRATED
29 COMPETENCE AND QUALIFICATIONS ONLY. THE PURCHASING AGENCY AND THE SELECTION
30 COMMITTEE SHALL NOT REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER
31 COST INFORMATION AT ANY POINT IN THE SELECTION PROCESS UNDER THIS SECTION,
32 INCLUDING THE SELECTION OF THE PERSONS OR FIRMS TO BE INTERVIEWED, THE
33 SELECTION OF THE PERSONS AND FIRMS TO BE ON A FINAL LIST, IN DETERMINING THE
34 ORDER OF PREFERENCE OF PERSONS AND FIRMS ON A FINAL LIST OR FOR ANY OTHER
35 PURPOSE IN THE SELECTION PROCESS.

36 C. AFTER EACH FINAL LIST IS SELECTED, THE PROCUREMENT OFFICER SHALL
37 ENTER INTO NEGOTIATIONS WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON EACH
38 FINAL LIST FOR THE SINGLE CONTRACT OR MULTIPLE CONTRACTS. THE NEGOTIATIONS
39 SHALL INCLUDE CONSIDERATION OF COMPENSATION AND OTHER CONTRACT TERMS THAT THE
40 PROCUREMENT OFFICER DETERMINES TO BE FAIR AND REASONABLE TO THIS STATE. IN
41 MAKING THIS DETERMINATION, THE PROCUREMENT OFFICER SHALL TAKE INTO ACCOUNT
42 THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF THE
43 PROFESSIONAL SERVICES TO BE RENDERED. IF THE PROCUREMENT OFFICER IS UNABLE
44 TO NEGOTIATE A SATISFACTORY CONTRACT WITH THE HIGHEST QUALIFIED PERSON OR
45 FIRM ON THE FINAL LIST FOR THE CONTRACT AT A PRICE AND ON OTHER CONTRACT

1 TERMS THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND REASONABLE TO THIS
2 STATE, THE PROCUREMENT OFFICER SHALL FORMALLY TERMINATE NEGOTIATIONS WITH
3 THAT PERSON OR FIRM. THE PROCUREMENT OFFICER MAY UNDERTAKE NEGOTIATIONS WITH
4 THE NEXT MOST QUALIFIED PERSON OR FIRM ON THE FINAL LIST IN SEQUENCE UNTIL AN
5 AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO REJECT ALL PERSONS OR
6 FIRMS ON THE FINAL LIST FOR THE CONTRACT. IF THE PROCUREMENT OFFICER
7 TERMINATES NEGOTIATIONS WITH A PERSON OR FIRM ON THE FINAL LIST FOR A
8 CONTRACT OR MULTIPLE CONTRACTS AND COMMENCES NEGOTIATIONS WITH ANOTHER PERSON
9 OR FIRM ON THE FINAL LIST FOR THAT CONTRACT OR THOSE MULTIPLE CONTRACTS, THE
10 PROCUREMENT OFFICER SHALL NOT IN THAT PROCUREMENT RECOMMENCE NEGOTIATIONS OR
11 ENTER INTO THE SINGLE CONTRACT OR MULTIPLE CONTRACTS FOR THE PROFESSIONAL
12 SERVICES COVERED BY THAT FINAL LIST WITH ANY PERSON OR FIRM ON THAT FINAL
13 LIST WITH WHOM THE PROCUREMENT OFFICER HAS TERMINATED NEGOTIATIONS.

14 D. IF THE PURCHASING AGENCY DOES NOT HAVE A PROCUREMENT PROTEST POLICY
15 AND PROCEDURES THAT HAVE BEEN FORMALLY ADOPTED AND PUBLISHED BY THE
16 PURCHASING AGENCY, FOR PROTESTS RELATING TO PROCUREMENTS UNDER THIS CHAPTER
17 THE PURCHASING AGENCY SHALL FOLLOW THE PROCUREMENT PROTEST POLICY AND
18 PROCEDURES OF THE DEPARTMENT. THE PURCHASING AGENCY SHALL PROCESS ALL
19 PROTESTS RELATING TO PROCUREMENTS UNDER THIS SECTION.

20 Sec. 26. Section 41-2582, Arizona Revised Statutes, as renumbered by
21 this act, is amended to read:

22 41-2582. Project delivery methods for design and construction
23 services

24 A. A purchasing agency may procure design services, construction and
25 construction services, as applicable, under any of the following project
26 delivery methods:

- 27 1. Design-bid-build.
- 28 2. Construction-manager-at-risk.
- 29 3. Design-build.
- 30 4. Job-order-contracting.

31 B. For the design-bid-build project delivery method, the director
32 shall procure:

- 33 1. Design services pursuant to section 41-2578 OR 41-2579.
- 34 2. Construction by competitive sealed bidding, except as otherwise
35 provided in section 41-2532.

36 C. The director shall procure construction services under the
37 construction-manager-at-risk, design-build and job-order-contracting project
38 delivery methods pursuant to section 41-2578 OR 41-2579.

39 D. The director shall procure design services relating to a
40 construction-manager-at-risk construction services project pursuant to
41 section 41-2578 OR 41-2579.

42 E. For job-order-contracting construction services projects, if the
43 director does not include design services in the job-order-contracting
44 construction services contract, the director shall procure any design

1 services relating to job-order-contracting construction services projects
2 under the contract pursuant to section 41-2578 OR 41-2579.

3 Sec. 27. Section 41-2616, Arizona Revised Statutes, is amended to
4 read:

5 41-2616. Violation; classification; liability; civil penalty;
6 enforcement authority

7 A. A person who contracts for or purchases any material, services or
8 construction in a manner contrary to the requirements of this chapter, the
9 rules adopted pursuant to this chapter, the rules adopted by the state board
10 of education pursuant to section 15-213 or rules adopted by the Arizona board
11 of regents, the Arizona lottery commission or the judicial branch pursuant to
12 section 41-2501 is personally liable for the recovery of all public monies
13 paid plus twenty per cent of such amount and legal interest from the date of
14 payment and all costs and damages arising out of the violation.

15 B. A person who intentionally or knowingly contracts for or purchases
16 any material, services or construction pursuant to a scheme or artifice to
17 avoid the requirements of this chapter, rules adopted pursuant to this
18 chapter, rules adopted by the state board of education pursuant to section
19 15-213 or rules adopted by the state board of regents, the state lottery
20 commission or the judicial branch pursuant to section 41-2501 is guilty of a
21 class 4 felony.

22 C. A person who serves on an evaluation committee for a procurement
23 shall sign a statement before reviewing bids or proposals that the
24 person has no interest in the procurement other than that disclosed and will
25 have no contact with any representative of a competing vendor related to the
26 particular procurement during the course of evaluation of bids or proposals,
27 except those contacts specifically authorized by sections 41-2534, 41-2537,
28 41-2538, ~~and~~ 41-2578 AND 41-2579. The person shall disclose on the statement
29 any contact unrelated to the pending procurement that the person may need to
30 have with a representative of a competing vendor and any contact with a
31 representative of a competing vendor during evaluation of bids or proposals
32 except those contacts specifically authorized by sections 41-2534, 41-2537,
33 41-2538, ~~and~~ 41-2578 AND 41-2579. A person who serves on an evaluation
34 committee and who fails to disclose contact with a representative of a
35 competing vendor or who fails to provide accurate information on the
36 statement is subject to a civil penalty of at least one thousand dollars but
37 not more than ten thousand dollars.

38 D. The attorney general on behalf of this state shall enforce the
39 provisions of this chapter.

40 Sec. 28. Existing procurements

41 Any procurement that is commenced by publication of notice or issuance
42 of a request for qualifications before the effective date of this act based
43 on any section of the Arizona Revised Statutes that is amended by this act
44 shall be continued and completed under the law in effect before the effective
45 date of this act.